

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Little Isle IV, LLC, a) NO. CV-09-142-PHX-SRB

Delaware Limited Liability)
Company; Ula Makika, LLC, a)

Delaware Limited Liability)
Company; and Philip Kenner,)

)
Plaintiffs,)

)
vs.)

)
Kenneth A. Jowdy, et al.,)

)
Defendant.)

)

VIDEOTAPED DEPOSITION OF ROBERT GAUDET

Phoenix, Arizona
July 2, 2009

9:05 a.m.

Prepared by:

Jill Marnell, RPR

Arizona Certified Reporter

No. 50021

2

1 INDEX

2 WITNESS PAGE

3 ROBERT GAUDET

4 Examination by Mr. Lake 5
5 Examination by Mr. Harper 124

6

7 INDEX TO EXHIBITS

8 No. Description Page

9 1 Document titled "Revolving Line of 9

10 Credit Loans 2-7-2004"

11 2 Color laser photograph 48

12 3 Calendar for November and December 2004 57

13 4 Agenda for the 2nd Annual Diamante Cup 59
2004

14

5 Hand-drawn diagram by the witness 73

15
6 Hand-drawn diagram by the witness 73

16

17
INSTRUCTIONS TO WITNESS NOT TO ANSWER

18
Page Line

19
32 11

20
38 3
57 7

21
109 23
111 13

22
114 5
116 18

23
117 2

24

25

3

1 VIDEOTAPED DEPOSITION OF ROBERT GAUDET

2

3 The videotaped deposition of ROBERT GAUDET was
4 taken on July 2, 2009, commencing at 9:05 a.m., at the law
5 offices of Perkins Coie Brown & Bain, 2901 North Central,
6 20th Floor, Phoenix, Arizona, before JILL MARNELL, a
7 Certified Reporter, Certificate No. 50021, for the State

8 of Arizona.

9 The plaintiffs were represented by their
10 attorney, Harper Law, by Mr. Kevin R. Harper.

11 The defendant was represented by his attorneys,
12 Perkins Coie Brown & Bain, by Mr. Brian C. Lake.

13 The witness was represented by his attorneys,
14 Augustine & McKenzie, by Mr. Paul J. Augustine.

15 Also present was Richard Borgmann, videographer,
16 and Kenneth Jowdy.

17

18

19 The following proceedings were had:

20

21

22

23

24

25

4

1 THE VIDEOGRAPHER: We're going on the record
2 at 9:05.

3 This is the videotape deposition of Robert
4 Gaudet, taken by the defendant, in the matter of Little

5 Isle IV, et al., versus Kenneth Jowdy, et al., in the
6 U.S. District Court for the District of Arizona. The
7 case number is CV-09-142.

8 This deposition is being held in the offices
9 of Perkins Coie Brown & Bain, 2901 North Central Avenue,
10 Suite 2000, Phoenix, Arizona, on Thursday, July 2nd, 2009.

11 The court reporter is Jill Marnell from the
12 firm of Glennie Reporting Services, Phoenix, Arizona. The
13 certified legal video specialist is Richard Borgmann in
14 association with Forensic Video Deposition Services,
15 Phoenix, Arizona.

16 Will the attorneys introduce themselves,
17 please; defendants first.

18 MR. LAKE: Brian Lake with Perkins Coie
19 Brown & Bain, representing Defendant Ken Jowdy.

20 MR. AUGUSTINE: Paul Augustine of
21 Augustine & McKenzie, representing the deponent, Bobby
22 Gaudet.

23 MR. HARPER: Kevin Harper of Harper Law,
24 PLC, representing the plaintiffs.

25 THE VIDEOGRAPHER: Will the court reporter

2

3 ROBERT GAUDET,

4 having been duly sworn by the Certified Reporter to
5 testify to the whole truth and nothing but the truth,
6 testified as follows:

7

8 EXAMINATION

9 BY MR. LAKE:

10 Q. Good morning, Mr. Gaudet.

11 A. Good morning.

12 Q. Can you please state your name and current
13 address for the record.

14 A. Robert Gaudet of --

15 How complete do you want the address? Of
16 Cabo San Lucas, Mexico.

17 THE COURT REPORTER: Say it again.

18 THE WITNESS: Cabo San Lucas.

19 THE COURT REPORTER: Oh.

20 THE WITNESS: Actually, San Jose del Cabo,
21 technically. San Jose del Cabo, Mexico.

22 Q. BY MR. LAKE: Okay. And is Mr. Augustine
23 representing you for purposes of your deposition today?

24 A. Correct, yes.

25 Q. Have you ever participated in a deposition

6

1 before?

2 A. I have not.

3 Q. All right. Have you ever testified in court

4 before?

5 A. No.

6 Q. Well, this -- this will be a little new, so I'm

7 going to go through a couple of preliminary instructions

8 here.

9 A. Thank you.

10 Q. The deposition is taken under oath. Which, for

11 your purposes, has the same force and effect as if you

12 were actually testifying as a witness in federal court.

13 And your testimony here today, including the video record,

14 may be offered as evidence in court.

15 Do you understand that?

16 A. Yes.

17 Q. If you provide knowingly false testimony during

18 this deposition, you can be subject to sanctions by the

19 Court and also possibly federal criminal charges for

20 perjury.

21 Do you understand that?

22 A. Yes.

23 Q. I will be asking you a series of questions and

24 you'll be giving me answers to those questions as best

25 you're able.

7

1 I'll try to ask questions that are clear and

2 easy to understand. But if I do ask a question that you

3 don't understand, please let me know and I'll do my best

4 to rephrase it and make my answer -- or my question more

5 clear.

6 Given that, if you do answer a question, I

7 will assume that you understand it.

8 Okay?

9 A. Very good.

10 Q. Also, as you can see, the deposition is being

11 recorded by a court reporter. And she has difficulty

12 getting things down correctly if we both talk at the same

13 time. So I will try to wait until you finish your answers

14 before I ask the next question. And I'll ask you to try

15 to wait until my question is complete before you give your

16 answer, even if you kind of know what it is that I'm

17 asking, because it makes for a cleaner record that way.

18 Okay?

19 A. Excellent.

20 Q. Also, the court reporter can't take down nods or
21 shrugs or nonverbal responses, so you need to speak the
22 answers clearly for the record.

23 At certain points during the deposition your
24 attorney may say objection or objection to form. This is
25 something attorneys do to preserve an objection on the

8

1 record. But you can go ahead and answer the question
2 unless your attorney instructs you not to answer the
3 question.

4 And finally, if at any time you need to take
5 a break for a restroom or for any other reason, just let
6 me know and we can -- we can do that. The only thing I
7 would ask is that we take a break after an answer to a
8 question, not while there's a question still pending.

9 Is that okay?

10 A. Yes.

11 Q. All right. Are you using any medication today
12 that could affect your testimony?

13 A. No.

14 Q. Is there anything else that would prevent you
15 from providing truthful and reliable testimony today?

16 A. No.

17 Q. Okay. You mentioned earlier that Mr. Augustine
18 is representing you today for this deposition; is that
19 right?

20 A. Yes.

21 Q. Do you know whether Mr. Augustine also represents
22 Philip Kenner in matters involving Mr. Jowdy?

23 A. I do not.

24 Q. You mean you don't know?

25 A. I don't know if he's representing.

9

1 Q. Okay. Do you know whether Mr. Augustine has ever
2 represented Mr. Kenner?

3 A. I don't understand that question.

4 Q. Do you know whether Mr. Augustine has ever worked
5 as Mr. Kenner's attorney?

6 A. I don't know, no.

7 Q. Okay. How did you first learn that your
8 deposition had been requested in this action?

9 A. Could you repeat that, please?

10 Q. Sure.

11 How did you first learn that your deposition
12 had been requested in this lawsuit?

13 A. I don't recall. I don't recall specifically.

14 Q. Okay. Do you remember whether someone gave you a
15 phone call or sent you a letter or an e-mail or --

16 A. Hmm. It may -- If you can ask that question
17 again, as we go forward I'll continue to try and recall.

18 I just don't recall my initial awareness.

19 MR. LAKE: Okay. Can you mark this as
20 Exhibit 1, please.

21 (Deposition Exhibit No. 1 was marked for
22 identification by the court reporter.)

23 Q. BY MR. LAKE: Mr. Gaudet, I'm showing you what's
24 been marked as Exhibit 1.

25 A. Okay.

10

1 Q. By the way, how do you pronounce your last name?

2 A. Gaudet is good.

3 Q. Gaudet?

4 A. Yes.

5 Q. Kind of like the Australian good day, sir?

6 A. Usually brings a smile to my face.

7 Q. Okay. This document that's marked as Exhibit 1

8 is titled at the top: Revolving Line of Credit Loans,

9 12/7/04.

10 Have you ever seen this document before?

11 A. Before?

12 Q. Before now.

13 A. Before now, yes.

14 Q. Okay. I'm going to -- this obviously is the --

15 Do you understand this to be the document whose

16 authenticity has been requested in this lawsuit?

17 A. Who? Or --

18 Q. Do you understand that this document is one of

19 the documents that is central to the lawsuit involving

20 Mr. Jowdy and Mr. Kenner?

21 A. Yes.

22 Q. Okay. I'm going to refer to this as the loan

23 agreement document or the contract or the written

24 contract. So if I say any of those terms, will you

25 understand that to mean this document?

11

1 A. Yes.

2 Q. Okay. What is the first time that you -- Well,

3 let me have you take a look at the second page of the

4 document. Does that appear to be your signature there

5 under the line that says "Witness"?

6 A. Yes.

7 Q. All right. I want you to take a minute to think
8 about this question before you answer it and then provide
9 your sworn testimony for the Court.

10 Did you sign this document in December 2004?

11 A. Yes.

12 Q. Do you have a clear recollection of having done
13 that?

14 A. I have a fairly clear recollection, yes.

15 Q. Did you see Ken Jowdy sign this document in 2004?

16 A. I recall a document with his name on it and a
17 line, and I recall a document with a line that I was
18 requested to witness.

19 Q. So do you mean to say that you don't know whether
20 it was this same document that you saw him sign?

21 A. I assume.

22 Q. You assume -- I'm not sure I understand what you
23 mean.

24 A. I assume it was the same document, yes.

25 Q. Well, what is that assumption based on?

1 A. The line that I'm looking at, the signature that
2 I'm looking at.
¹²

3 Q. Okay. But what you're saying, then, I think, if

4 I understand you correctly, is you remember seeing --
5 witnessing Ken Jowdy sign a document in December of 2004.

6 A. Yes.

7 Q. And you countersigned as a witness to that same
8 document?

9 A. Yes.

10 Q. But you're not sure whether it was this same
11 document that we're looking at now as Exhibit 1?

12 A. Yes.

13 Q. What do you remember about that document that you
14 remember seeing him sign in 2004?

15 A. Hmm. Just a little bit more specific. What do
16 I --

17 Q. Well, you said you remembered seeing a document
18 with a line for his name. Do you remember anything else
19 about that document that -- that he signed?

20 A. I don't, no.

21 Q. Do you remember how many pages it was?

22 A. No.

23 Q. Have you done anything to prepare for your
24 deposition today?

25 A. Could you repeat that? Sorry. I was just

1 reading the document.

2 Q. Sure.

3 Have you done anything to prepare for your
4 deposition today?

5 A. Yes.

6 Q. And what was that?

7 A. Just conversations related.

8 Q. Conversations with whom?

9 A. With my representation.

10 Q. Okay. And I don't want to -- I don't want to ask
11 you what you discussed with your attorney.

12 A. No, that's fine.

13 Q. Did you have conversations with anyone other than
14 Mr. Augustine about your deposition?

15 A. Not about the deposition.

16 Q. Did you have conversations with anyone other than
17 Mr. Augustine about this lawsuit?

18 A. Yes.

19 Q. Who was that?

20 MR. HARPER: I'll object. I think that goes
21 beyond the scope of this deposition.

22 MR. LAKE: You can go ahead and answer.

23 THE WITNESS: Repeat the question for me.

24 Q. BY MR. LAKE: Well, just you had mentioned that

25 you had conversations with someone else about this

14

1 litigation, and I was asking who.

2 A. About this litigation.

3 Q. The litigation between Mr. Kenner and Little

4 Isle IV and Ula Makika and Mr. Jowdy.

5 A. So with that --

6 Other than --

7 Q. Other than your conversations with Mr. Augustine.

8 A. -- Mr. Augustine?

9 There has been some conversation with Phil

10 Kenner.

11 Q. Have you spoken to Phil Kenner about this

12 litigation during 2009?

13 A. 2009? 2009, yes.

14 Q. When was that?

15 A. I didn't catalog the day, but definitely 2009.

16 Q. Okay. Can you recall with any more specificity

17 than that? Was it early in the year?

18 A. I don't recall specifically.

19 Q. How many conversations did you have with

20 Mr. Kenner about this lawsuit?

21 A. Maybe three.

22 Q. Do you remember what you discussed in those
23 conversations?

24 A. No.

25 Q. Was anyone else present during those

15

1 conversations?

2 A. No.

3 Q. Were these conversations by telephone or in
4 person?

5 A. Telephone.

6 Q. All of -- all three?

7 A. Telephone. And I didn't catalog anything, so --

8 Specifically to the case. Telephone.

9 Q. And during those three conversations did you
10 discuss at all the existence of this loan agreement
11 document that's Exhibit 1?

12 A. Repeat that, please.

13 Q. During these conversations you had with
14 Mr. Kenner about the lawsuit, during any of those
15 conversations did you discuss this -- this loan agreement
16 document --

17 A. Yes.

18 Q. -- that's marked as Exhibit 1?

19 Did you discuss it during all three of those
20 conversations?

21 A. No.

22 Q. What did you discuss about the document?

23 A. He just asked me to recall.

24 Q. To recall what you remembered about it?

25 A. Correct.

16

1 Q. And what did you tell him?

2 A. I first attempted to get back to the time frame.

3 And he asked me just to recall things related to the time
4 frame.

5 Q. What did you recall or what did you tell him that
6 you recalled?

7 A. What did I tell him. I remember many things that
8 were upcoming in December. I remember I got invited to an
9 event. I know I had many conversations with Mr. Jowdy
10 previous to the event regarding my employment with the
11 company. I remember it was an important event. I
12 remember the event was in Cabo San Lucas. That's about
13 all.

14 Q. Have you ever spoken to Mr. Kenner's lawyers

15 about this lawsuit?

16 A. To Mr. Kenner -- I don't know who Mr. Kenner's
17 lawyers are.

18 Q. Okay. Mr. Harper, for example?

19 A. Yes.

20 Q. Have you spoken with him about this lawsuit?

21 A. Yes.

22 Q. Okay. And do you understand that that's
23 Mr. Kenner's attorney?

24 A. If that's what the record is, yes.

25 Q. Okay. How many times have you spoken with

17

1 Mr. Harper about this lawsuit?

2 A. Again, two or three times.

3 Q. Do you remember when?

4 A. I can't be certain, but I believe they were all
5 in 2009.

6 Q. Were those conversations you had by telephone?

7 A. No.

8 Q. In person?

9 A. Yes.

10 Q. Was anyone else present during those
11 conversations?

12 A. Yes.

13 Q. Who else was present?

14 A. Phil Kenner.

15 Q. Okay. Was this --

16 A. Which -- which now lets me recall that one of my

17 other conversations must have been with -- I'm not sure if

18 Phil was in all three, but I believe. Possibly.

19 Again, I wasn't clear if all the

20 conversations were telephone or -- or in person. But

21 thank you, I recall that I did have visits with

22 Mr. Harper.

23 Q. Okay. Did those visits occur here in Phoenix?

24 A. Yes.

25 Q. In Mr. Harper's office?

18

1 A. Yes.

2 Q. Were they within the last month?

3 A. One may have.

4 Q. Okay. Can you remember at all when these
5 conversations took place?

6 A. One within the last month is -- is very probable.

7 Q. Uh-huh. What did you discuss with Mr. Harper
8 during these meetings?

9 A. Just, again, anything that I could recall related
10 to my signature.

11 Q. When is the first time that you spoke with
12 Mr. Harper?

13 A. Hmm. I don't recall.

14 Q. Do you believe it was in 2009?

15 A. I do believe.

16 Q. Have you spoken with John Kaiser or his attorneys
17 about this litigation?

18 A. John Kaiser, yes. Attorneys, I don't know if
19 he's -- who his attorneys are.

20 Q. Okay. When did you speak with John Kaiser about
21 this litigation?

22 A. Couple months ago.

23 Q. Were those conversations in person or on the
24 telephone?

25 A. One was in person.

19

1 Q. Where did that take place?

2 A. That was here in Arizona.

3 Q. Was that in Mr. Harper's office also?

4 A. No.

5 Q. Where was it?

6 A. I think it was at a restaurant somewhere in the
7 Scottsdale area.

8 Q. Was anyone else present during that conversation?

9 A. I believe it was just myself and John Kaiser.

10 Q. How did you come to meet with John Kaiser at that
11 time?

12 A. I would assume he was here on business. I'm not
13 sure. We didn't discuss.

14 Q. Well, how did you first get in contact with him?
15 Did you call him?

16 A. No. There was no formal communication or contact
17 to set up a meeting.

18 Q. Okay. I just -- I'm trying to figure out how you
19 ended up at the same restaurant at the same table. It's
20 not a trick question. It's just a --

21 A. Yeah. No, it was a social -- by chance he was in
22 town and I was.

23 Q. Okay. Did he contact you and ask you to have
24 dinner or --

25 A. It was -- it was nothing specific. We just had

20

1 free time at the same time.

2 Q. Okay. I'm just trying to find out who -- who

3 started the contact, who initiated the contact between the
4 two of you.

5 A. I don't know.

6 Q. Was the purpose of this meeting to discuss the
7 lawsuit?

8 A. No.

9 Q. What was purpose of the meeting?

10 A. It was just social.

11 Q. And did you discuss the lawsuit at the meeting?

12 A. We discussed nothing regarding the lawsuit
13 because I don't know if a lawsuit existed at the time.

14 But just many things general related to himself.

15 Q. When did you -- when did you believe that this
16 meeting occurred?

17 A. Could have been a month or two ago. I'm not
18 certain.

19 Q. Are you and Mr. Kaiser friends?

20 A. We have a friendship, yes.

21 Q. How often do you see him?

22 A. Not often.

23 Q. When was the last time you saw him prior to this
24 meeting a few months ago?

25 A. I don't know.

21

1 Q. Did Mr. Kenner ask you or John Kaiser to -- to
2 speak with each other --

3 A. No.

4 Q. -- about the litigation?

5 During this meeting with Mr. Kaiser, did
6 you -- did you discuss at all the loan -- this loan
7 agreement document, Exhibit 1?

8 A. He asked me if I could recall anything, yes.

9 Q. Why did he bring up that topic?

10 MR. HARPER: Object to form.

11 MR. AUGUSTINE: Object to form.

12 If you know.

13 Q. BY MR. LAKE: If you know. Did he say?

14 A. Repeat the question.

15 Q. Do you know why Mr. Kaiser brought up this topic
16 of the loan agreement document while you were having
17 dinner?

18 A. No.

19 Q. What did he ask you?

20 A. What did he ask me. I just recall things being
21 very general. Nothing very -- nothing pointed, nothing
22 specific.

23 Q. Tell me everything you remember about what you
24 said in this discussion about the loan agreement document.

25 A. With John Kaiser?

22

1 Q. With John Kaiser, right.

2 A. I don't recall.

3 Q. The only thing you recall is that he mentioned
4 the existence of this document?

5 A. Yes.

6 Q. Did he ask you if you remembered signing it?

7 A. Yes.

8 Q. And what did you tell him?

9 A. I told him what I mentioned to you earlier, that
10 I recall signing as a witness to a document.

11 Q. Did you tell him that you didn't remember exactly
12 what the -- which document it was or what the document
13 was?

14 A. Yes, correct.

15 Q. Did he mention that he had any involvement with
16 the creation of this loan agreement document?

17 A. Yes.

18 Q. What did he tell you?

19 A. He told me it was a document that he needed

20 for -- it was a document he had for the Hawaii entity, for
21 the Hawaii company.

22 Q. Did he have a copy of the document there at the
23 dinner?

24 A. No.

25 Q. Did you know what document he was talking about?

1 A. He had referred to it as a loan document.

2 Could you repeat that question so I can just
3 be accurate for you?

4 Q. Yeah. I just -- I just wanted to know if you
5 knew what he -- what document he was talking about in the
6 conversation.

7 A. Yes.

8 Q. What document did you understand him to be
9 talking about?

10 A. I got this document or I received this document
11 through two different persons. One was Tom Harvey and one
12 was Fernando Garcia.

13 Q. When you say this document, you mean this
14 Exhibit 1?

15 A. Exhibit 1, yes.

16 Q. Okay. And you believe you received it before

17 this meeting with -- with Mr. Kaiser?

18 A. I had an electronic copy --

19 Q. Uh-huh.

20 A. -- again, forwarded to me from Fernando and

21 Mr. Harvey.

22 Q. By electronic copy, do you mean like a PDF scan?

23 A. A PDF scan, yes.

24 Q. When did you receive a PDF scan of Exhibit 1 from

25 Mr. Harvey and Mr. --

24

1 What's his last --

2 A. Garcia.

3 Q. -- Garcia?

4 A. Maybe four months ago. I'd have to check my
5 computer to be certain, but I'd guess at four.

6 Q. Would you have -- Was it sent to you in an
7 e-mail?

8 A. Yes.

9 Q. Where -- did Mr. Harvey and Mr. Garcia send you
10 two separate e-mails that each had this document attached?

11 A. Yes.

12 Q. Were they sent around the same time?

13 A. Yes.

14 Q. Do you keep an electronic calendar or anything
15 that would -- or any kind of diary that might show the
16 date on which you had this dinner with Mr. Kaiser?

17 A. No, to a calendar. I don't keep a
18 calendar/diary.

19 Q. Do you think there are any documents in your
20 possession that might show when this dinner with
21 Mr. Kaiser took place?

22 A. Again, it wasn't a dinner specifically. But I'd
23 be happy to look through my -- my computer to see if
24 there's anything that would --

25 Q. Okay.

25

1 A. -- date it.

2 Q. But you believe it was after you had received a
3 copy of this document from Mr. Harvey and Mr. Garcia?

4 A. Yes.

5 Q. Did you bring a copy of the document with you to
6 the dinner with Mr. Kaiser?

7 I keep saying dinner. Was it a dinner or a
8 lunch?

9 A. It -- it was neither.

10 Q. Or --

11 A. It was just a social gathering.

12 Q. Okay. Was it at a restaurant?

13 A. Restaurant.

14 Q. I thought you said restaurant. I might have --

15 A. Yeah, sure, yes.

16 Q. -- misheard, but --

17 A. Yes.

18 Q. Okay. So I forgot if you answered. Did you

19 bring a copy of the document with you to the meeting?

20 A. No.

21 Q. Did you ask to meet with Mr. Kaiser to discuss

22 the document?

23 A. No.

24 Q. Did he ask to meet with you?

25 A. Again, there was nothing specific regarding the

26

1 document, but we did discuss it.

2 I was sent the file from Garcia and Harvey

3 and I felt very unconvertible with some of the commentary

4 that came out of -- or after the e-mails. And that

5 compelled me to be, you know, happy to speak with John.

6 Q. Who was it -- Was there anyone else present at

7 this meeting other than you and Mr. Kaiser?

8 A. No.

9 Q. Who first brought up the topic of the loan
10 document during this meeting?

11 A. John.

12 Q. And he asked your recollection, I think you said,
13 about the circumstances of the document.

14 Was there any other discussion about the
15 document?

16 A. Hmm. Other than anything that I could recall
17 related, I believe that was the extent of it.

18 Q. When Mr. Harvey and Mr. Garcia e-mailed you this
19 document, is that the first time you had seen it since --
20 I mean, is that the first time you had seen it since --

21 If it was the same document that was signed in 2004, would
22 that have been the first time you had seen it since then?

23 A. Yes.

24 Q. Was there any other discussion that you had with
25 Mr. Kaiser during that meeting about the lawsuit that you

27

1 can remember?

2 A. Again, I don't know if there was a lawsuit in
3 place.

4 Q. Uh-huh.

5 A. That I can't make comment to.

6 Q. Did Mr. Kaiser indicate that he had been involved
7 in the creation or the preparation of this document?

8 A. I don't recall.

9 Q. Did he say that he had been -- that he had kept
10 the document in his possession or in his files?

11 A. Yes.

12 Q. What do you remember him saying about that?

13 A. He said he wished he would have brought a copy
14 with him. And I said not to worry, because I've got a
15 copy which I received, again, from Harvey and -- and
16 Garcia, and that all I know is my signature is on it.

17 That's my signature.

18 Q. Have you ever spoken with Tim Gaarn about this
19 document or about this lawsuit?

20 A. No.

21 Q. Do you know who Tim Gaarn is?

22 A. I've heard the name before, yes.

23 Q. Have you ever met him?

24 A. I have not met him.

25 Q. Have you ever spoken to him?

2 Q. On the phone?

3 A. Yes.

4 Q. When was that?

5 A. Maybe seven months ago, eight months ago, nine.

6 Q. Did that have anything to do with this loan

7 agreement document or the lawsuit?

8 A. No.

9 Q. Have you spoken with Philip Kenner about this
10 loan agreement document, Exhibit 1?

11 A. Yes.

12 Q. I think you mentioned the three meetings that you
13 had. Were there any other times when you spoke with him
14 about this document?

15 A. There may have been. I've never recognized the
16 significance of it until conversations with Harvey.

17 Q. With Tom Harvey?

18 A. Correct.

19 Q. When was your first discussion with him about
20 this document?

21 A. You know, I've said about four months ago. And I
22 think -- you know, as I continue to try and recall, I
23 think that's still accurate.

24 Q. Have you ever exchanged any written

25 communications with anyone relating to this loan agreement

29

1 document: e-mails, letters, anything like that?

2 A. No.

3 Q. Do you have in your possession any documents or
4 e-mails that refer to this loan agreement document?

5 A. Just the ones I mentioned, from Harvey and
6 Garcia.

7 Q. Do you know Ken Jowdy?

8 A. Yes.

9 Q. When did you first meet Ken Jowdy?

10 A. Would have been either late 2003 or early 2004.

11 Q. What were the circumstances under which you first
12 met him?

13 A. It was an introduction -- telephone introduction
14 first off -- from a golf-industry person.

15 Q. Have you ever been employed by or paid to provide
16 services for Mr. Jowdy or any of the companies he owns or
17 manages?

18 A. Yes.

19 Q. Which companies have you been -- have you been
20 employed by or provided services to that are owned by or
21 managed by Mr. Jowdy?

22 A. There's many that exist, so specifically I think
23 it would be just Diamante Cabo San Lucas.

24 Q. Is that a -- is that a corporation?

25 A. I believe so.

30

1 Q. Do you know?

2 Have you ever worked for a company called
3 Diamante Management?

4 A. I did mention that there's several entities. And
5 I couldn't qualify which one I was specifically with other
6 than Diamante Cabo San Lucas.

7 I'm familiar with the namesake Diamante
8 Management, yes.

9 Q. So when you say Diamante Cabo San Lucas, that you
10 worked for Diamante Cabo San Lucas, are you referring
11 generally to that project rather than a specific --

12 A. Yes.

13 Q. -- legal entity?

14 Was the company you worked for a U.S.- or a
15 Mexico-based company? Do you know?

16 A. I believe it was a Mexico-based company.

17 Q. What's that belief based on?

18 A. Because I was a resident of Mexico, and the

19 company existed in Mexico -- or the project, pardon me,
20 existed in Mexico.

21 Q. Okay. But you don't know whether the actual
22 entity that employed you and that paid your salary, you
23 don't know which actual entity that was; right?

24 A. Again, I believe I was employed by a Mexican
25 company.

31

1 Q. Were you paid in dollars or pesos?

2 A. Dollars.

3 Q. Who paid you?

4 A. I don't know specifically the entity that paid
5 me, but I worked for Diamante Cabo San Lucas.

6 Q. Were you paid by check or by cash?

7 A. Initially check.

8 Q. And then later cash?

9 A. No, wire deposit.

10 Q. Okay. When you were paid by check, what
11 company's name was on the check, the paycheck?

12 A. I remember an address of Danbury.

13 Q. Danbury, Connecticut?

14 A. Yes.

15 Q. If you were paid in dollars rather than pesos,

16 why did you assume that it was a Mexican company that was
17 paying you?

18 A. It's a very common practice to be paid in
19 dollars.

20 Q. For Mexican companies to pay their employees with
21 dollars rather than pesos?

22 A. Correct.

23 Q. But other than your general belief that since you
24 were working in Mexico, you know, that you assumed it was
25 a Mexican company, did you have any basis for actually

32

1 knowing which entity employed you?

2 A. I spent a lot of time with the human resource
3 manager in Cabo San Lucas.

4 Q. Who was that?

5 A. Her name was Luly Ruiz. R-U-I-Z, I believe.

6 THE COURT REPORTER: How about Louie?

7 THE WITNESS: Luly. L-U-L-Y.

8 Q. BY MR. LAKE: How much were you paid?

9 MR. AUGUSTINE: I'll start objecting to
10 these questions. It's beyond the scope of the deposition
11 as represented to me by Mr. Lake. So I'll instruct my
12 client not to answer.

13 Q. BY MR. LAKE: Well, can you -- can you just give
14 me a general description of what you did for Mr. Jowdy's
15 company?

16 A. I was involved in sales and marketing, promotion;
17 and director of golf operations.

18 Q. Did you perform services in -- in -- right in
19 Cabo or somewhere else?

20 A. In Cabo.

21 Q. Was it in -- were you in an office every day or
22 what was the -- what did the job entail?

23 A. Yes, in an office most days; on the site many
24 days.

25 Q. In Cabo --

33

1 A. In Cabo, yes.

2 Q. -- in both cases?

3 Who hired you for this job?

4 Well, let me back up a little. Were you an
5 employee or a consultant of the company?

6 A. An employee.

7 Q. What is that understanding based on?

8 A. That I spent considerable time in the office in
9 Cabo San Lucas. That I interviewed potential employees

10 for the project in Cabo San Lucas. That I participated in
11 any staff meetings that only employees were invited to.

12 That my --

13 Generally, that's -- that's my --

14 Q. Okay.

15 A. -- my assumption.

16 Q. Did you have an employment contract?

17 A. I had an employment agreement with Mr. Jowdy.

18 Q. Was that a written agreement?

19 A. Was not. Wanted it to be, but never happened.

20 Q. Were taxes withheld from your check?

21 A. I believe so.

22 Q. When did you start work for Mr. Jowdy's company?

23 A. Early 2005.

24 Q. And how long did you work for him?

25 A. Through 2008.

34

1 Q. Who hired you?

2 A. Ken Jowdy.

3 Q. Did you work for or get paid by -- by someone --

4 by anyone else during this same time period?

5 A. I don't understand the question.

6 Q. During the time period that you worked for

7 Mr. Jowdy, were you also getting -- were you also working
8 for or getting paid by another company or by someone else?

9 A. My employment started in I believe March of '05.

10 And I received my first payment from the company
11 approximately one year later. So during the time period
12 that was delinquent, that I didn't receive any payment
13 from the company, yes, I would have received other.

14 Q. From -- from what source?

15 A. I own a real estate company in Cabo as well.

16 Q. Was there -- were there any other companies or
17 entities that you worked for during the time period that
18 you worked for Mr. Jowdy or that you were paid by?

19 A. Just my own entity.

20 Q. During the time that you worked for Mr. Jowdy's
21 company up through February of 2008, were you ever paid or
22 employed by Mr. Kenner?

23 A. Repeat the time frame for me.

24 Q. The same time frame that you were working for
25 Mr. Jowdy's company. During that entire time period,

35

1 which I think you said ended in 2008.

2 Is that right?

3 A. 2008, yes.

4 Q. During that time period, were you ever paid by or
5 employed by any company owned or managed be Mr. Kenner?

6 A. Yes.

7 Q. What company was that?

8 A. It was a Hawaiian-based company.

9 Q. Do you remember what it was called?

10 A. I do not.

11 Q. When was that?

12 A. Would have been -- I don't recall specifically,
13 but -- but I was -- I was definitely forced to look at
14 alternate income sources.

15 You know, maybe 2005.

16 Q. How long did you work for Mr. Kenner's company?

17 A. For that specific deal, it would have lapsed --
18 it would have lapsed -- maybe a start and finish of a
19 total of two months.

20 Q. Around what -- when was that?

21 A. I don't recall.

22 Q. Do you think it might have been around June of
23 2006?

24 A. Yes, it may have been.

25 Q. How much did Mr. Kenner pay you for your

1 two-month employment with his company?

2 A. Again, I'm not certain on if it was exactly two
3 months.

4 Q. Okay. Or however long it was.

5 A. Right. Just a little bit more than 100,000.

6 Q. And you believe it was for a few months?

7 I mean, I know you don't know exactly. But
8 does that sound like the right ballpark?

9 A. What was the ballpark? What was the question?

10 Q. How long -- about how long were you employed by
11 Mr. Kenner's company?

12 A. Hard to put a time frame to it because it didn't
13 have a start and a finish day.

14 Q. What do you mean by that, that it didn't --

15 A. I wasn't -- it wasn't a scheduled start on
16 Monday, finish on Friday, start on Monday, finish on
17 Friday equals -- it wasn't that arrangement.

18 Q. What services were you providing for Mr. Kenner's
19 company?

20 A. Services related to finance.

21 Q. Relating to a project in Hawaii?

22 A. Yes.

23 Q. What does that mean, services related to finance?

24 MR. AUGUSTINE: Well, I'm going to -- again,

25 I let -- I can understand why you need to get witness

37

1 bias, I'll start to --

2 THE COURT REPORTER: Witness bias?

3 MR. AUGUSTINE: Bias.

4 I'll start to -- I'll start to object on

5 this on the grounds that it's beyond the scope of the

6 deposition and what the Court ordered, as far as going

7 down this road. So I'll make those objections.

8 Q. BY MR. LAKE: Well, were you employed by

9 Mr. Kenner full-time, your employment with -- I'm sorry,

10 with Mr. Jowdy? Was your employment with Mr. Jowdy a

11 full-time job?

12 A. It wasn't defined as that.

13 Q. Did you consider it to be a full-time employment,

14 a full-time job?

15 A. Yes. But, again, because it took a year to get

16 paid from the company, I had to seek alternate income

17 sources. And -- Yes.

18 Q. Did Mr. Jowdy know that you were working for

19 Mr. Kenner at the same time you were working for him?

20 MR. HARPER: Object to form.

21 MR. AUGUSTINE: I'll object to the form.

22 MR. HARPER: And I'll join in

23 Mr. Augustine's objection.

24 MR. AUGUSTINE: Yeah. And I'll --

25 MR. HARPER: The bias you're looking for is

38

1 established. Let's move on to something related to the

2 scope of this deposition.

3 MR. AUGUSTINE: Absolutely. And I'll

4 instruct the witness not to answer.

5 You can notice his deposition for another

6 purpose if you'd like to later, but you're probably going

7 to have to subpoena him for that.

8 MR. LAKE: Okay.

9 Q. BY MR. LAKE: Do you have any personal animosity

10 towards Mr. Jowdy?

11 A. I have a couple lawsuits that I've been forced to

12 move forward with.

13 Q. Okay. I'll ask you about that in a minute.

14 But would you say that you have personal

15 animosity towards him?

16 A. No.

17 Q. Tell me about the lawsuits that you've -- that

18 you have against Mr. Jowdy.

19 A. I have a labor lawsuit for wrongful termination

20 and I have a criminal complaint that's filed for moneys

21 not returned to me.

22 Q. Where are those actions pending?

23 A. In Mexico. My place of residence.

24 Q. When were those actions commenced?

25 Let's start with the labor -- the labor one.

39

1 That's a civil action?

2 A. I don't know. I'm not a lawyer, so I don't know

3 if it's civil or --

4 Q. Okay.

5 A. It would be in '08 for the labor.

6 Q. And when was the criminal action commenced?

7 A. The criminal had to get filed twice, due to the

8 first time I was told that the -- the complaint was

9 tampered with.

10 Q. What does that mean?

11 A. It was an incomplete file, so I had to file it

12 twice. So I'm having a hard time coming up with the date

13 that it was filed.

14 Q. Was it within the last year, do you think?

15 A. Yes. Well, the last 12-month period, sure.

16 Q. Are we talking about the civil -- I mean, the
17 labor case or the criminal?

18 A. The criminal.

19 Q. Do you believe it was within the last few months?

20 A. It's an ongoing process. I think it was much,
21 much before that.

22 Q. Do you believe it was filed in 2008?

23 A. The labor.

24 Q. The labor one. What about the criminal one? Do
25 you believe that was in 2008 or 2009?

40

1 A. Again, I believe within the last 12 months.

2 Q. Did Mr. Kenner provide any testimony or affidavit
3 in support of your labor lawsuit against Mr. Jowdy?

4 A. Yes.

5 Q. What did he provide in support of your lawsuit?

6 A. Awareness of my employment; awareness of my
7 agreement with Mr. Jowdy.

8 Q. Was this like a written declaration or an
9 affidavit that he submitted or was it like a testimony,
10 sworn testimony?

11 A. I'm not certain. I know the lawyer that handled

12 the case contacted him. So whether it's specifically an

13 affidavit or --

14 Q. Okay.

15 A. I'm not --

16 Q. You just don't know?

17 A. I don't know.

18 Q. What about the criminal action; did Mr. Kenner

19 submit an affidavit or testimony in support of your

20 criminal action against Mr. Jowdy?

21 A. I don't recall on that one. I know by law I

22 was -- I was required to provide a couple people to

23 testify, and I don't recall if in that case he's on it. I

24 don't recall.

25 Q. What are the allegations of the criminal action

41

1 against Mr. Jowdy?

2 A. In 2005 I had accumulated some expense

3 reimbursables with the company that have not been paid

4 back.

5 Q. What's the amount at issue in the criminal

6 action?

7 A. Criminal is I believe 300,000.

8 Q. And these were for expenses incurred while you

9 were an employee of his company?

10 A. These are expenses while I had an agreement with

11 Ken Jowdy, pending payment as an employee with Mr. Jowdy.

12 Because, again, I believe my first payment

13 from the company was in 2006. But my agreement started in

14 2005, approximately April 2005.

15 Q. The -- I guess I'm confused. In the criminal

16 action did you say it was for reimbursement of expenses?

17 A. Company-related expenses --

18 Q. Okay.

19 A. -- yes.

20 Q. In the labor -- in the labor lawsuit, how much is

21 at issue in that lawsuit?

22 A. I'm sorry?

23 Q. In the labor action that you filed, how much is

24 at issue in that action?

25 A. How much? I don't understand the question.

42

1 Q. How much money is involved in -- in your claim in

2 that case?

3 A. The exact amount of our -- my agreement with

4 Mr. Jowdy.

5 Q. Do you remember in the ballpark of how much it

6 is?

7 A. It was a multiyear agreement, and \$2 million.

8 Q. Did you receive payment as a commission based on
9 the purchase of the Diamante Cabo San Lucas property?

10 A. Repeat that for me.

11 Q. Did you receive any compensation as a commission
12 based on the purchase of the Cabo San Lucas property?

13 A. My real estate company did, yes.

14 Q. How much was that?

15 A. I don't recall. In the neighborhood of 200,000.

16 I don't recall the number exactly.

17 Q. Okay. Are you aware of anyone having filed or
18 attempting to instigate a criminal action against
19 Mr. Jowdy in the U.S. or Mexico other than the one that
20 you instigated?

21 A. Mine is in Mexico. And you're asking in the
22 U.S.?

23 Q. The U.S. or Mexico.

24 A. In the U.S., just -- I'm aware of the -- the --
25 pardon me, how do you say it? How did you say it? The

1 lawsuits? Did you say lawsuits?

2 Q. I'm asking about a criminal action.

3 A. I'm aware of criminal action in the U.S., yes.

4 Q. What action is that?

5 A. I don't know the specifics of it other than what
6 I read on the Internet.

7 Q. Against Mr. Jowdy?

8 A. Some friends of mine gave me links to some news
9 releases. And I don't know if I read them close enough to
10 identify if Mr. Jowdy was listed. I assume so, because
11 that's the name that was given to me.

12 Q. And these were criminal actions?

13 A. Again, I'm not a lawyer. I don't know criminal
14 versus other. But I know there was a lot of news articles
15 related to issues in the U.S.

16 Q. Okay. Are you aware of any -- other than the
17 actions you filed, are you aware of any other criminal
18 actions that have been filed or instituted against
19 Mr. Jowdy in Mexico?

20 A. Yes.

21 Q. What's -- what are you aware of?

22 A. I'm not sure if I understand what am I aware of.

23 Q. Well, what -- You said you are aware of a
24 criminal action filed against Mr. Jowdy in Mexico; is that
25 right?

1 A. Yes.

2 Q. Which action is that?

3 A. I'm not sure how the action is described. But

4 I'm aware that there is a group of investors that have an

5 issue. I don't know if there's actually a lawsuit in

6 place or if it's pending.

7 Q. How do you know about this criminal action?

8 A. The lawyer that is working on the action has

9 asked me some questions regarding.

10 Q. What -- what lawyer is that?

11 A. It's a Mexican attorney. His name is

12 Francisco -- I can't pronounce the last name correctly,

13 but I believe it's B-A-R-R-A-S.

14 Q. Do you have any involvement -- is this

15 Mr. Barras, or whatever -- however you pronounce it --

16 A. That's fine.

17 Q. -- is he also your attorney?

18 A. He's representing me on my criminal case, yes.

19 Q. Who brought this -- this other criminal case that

20 you're referring to?

21 You said it was some investors. Do you know

22 their names?

23 A. There's several of them. I wouldn't be able to
24 repeat the names.

25 Q. Do you know any of their names?

45

1 A. If you had something that showed their names, I
2 could probably say yes or no.

3 Q. Okay. But can you right -- sitting now, can you
4 remember any of the names of the people who brought this
5 action?

6 A. No.

7 Q. Have you provided any -- have you had any
8 involvement in this criminal action?

9 A. I was asked by the lawyer to give a -- again, I
10 don't know if you call it a testimony or a statement, yes.

11 Q. And did you -- did you give a statement?

12 A. Yes.

13 Q. Was it a statement under oath? Like a sworn
14 statement?

15 A. I don't recall.

16 Q. Are you aware of Mr. Kenner having instituted a
17 criminal action against Mr. Jowdy in Mexico?

18 A. I'm not sure if it's Mr. Kenner or, as I
19 mentioned earlier, investors.

20 Q. Do you -- in -- you're -- you're talking about
21 this same criminal action we've been discussing?

22 A. I don't know the status of that criminal action;
23 if it's actually in place, pending to be in place. But I
24 was asked to give a statement, yes.

25 Q. And you don't know whether Mr. Kenner is one of

46
1 the people who brought this criminal action or not?

2 A. Repeat that.

3 Q. Is Mr. Kenner one of the individuals who brought
4 this criminal action?

5 A. Yes.

6 Q. When did you provide this statement or sworn
7 testimony?

8 A. Maybe eight months ago, nine months ago.

9 Q. Did you provide only a single -- was it only a
10 single instance where you provided sworn testimony or
11 whatever this -- whatever we call this witnessing?

12 A. I may have done it more than once.

13 Q. When was the other -- do you remember any other
14 time when you did that?

15 A. There was an initial request for me to give
16 testimony, which I gave, approximately -- I think it was

17 about nine months ago.

18 Q. Okay.

19 A. And then I was requested by the same lawyer to do
20 it again several months ago.

21 MR. HARPER: Brian, I'm going to ask again
22 that we get to something pertaining to the agreement.

23 MR. LAKE: All right.

24 MR. HARPER: This line of questioning was
25 way off base.

47

1 Q. BY MR. LAKE: Was Mr. Kenner present when you
2 gave that statement? Either of the two statements you're
3 referring to?

4 A. Present? Define present for me.

5 Q. Was he there with you?

6 A. Not sitting with me when I did my testimony, no.

7 Q. You mean, he wasn't in the room with you?

8 A. Yes, correct.

9 Q. Well, was he in the building? Or in the --

10 A. While I was giving testimony?

11 Q. -- area?

12 A. Yeah.

13 Q. I mean, was he there with you?

14 A. He wasn't with me. He was -- Where was he? On
15 the second testimony, he was not with me, but I believe he
16 was -- How did you say it? Not in the building, but
17 somewhere?

18 Q. Around.

19 A. Yeah.

20 Q. Are those the only two times that you provided
21 testimony for this action, was the eight months ago and
22 then the second time a few months ago?

23 A. Yes.

24 Q. Did Mr. Kenner ask you to provide testimony on
25 those two occasions?

48

1 A. The lawyer that was working the case and --
2 again, for the investors, had asked me to.

3 Q. Was that the lawyer who was representing
4 Mr. Kenner also?

5 A. I believe so. I'm not certain how the structure
6 is, but, yes.

7 MR. LAKE: All right. Can you mark this,
8 please.

9 (Deposition Exhibit No. 2 was marked for
10 identification by the court reporter.)

11 Q. BY MR. LAKE: Mr. Gaudet, I'm showing you a
12 photograph that was taken on June 15th of this year, a few
13 weeks ago.

14 A. Uh-huh.

15 Q. Do you recognize any of the people in this photo?

16 A. Kind of a blurry image.

17 Q. It is.

18 Well, I'll represent to you that this is a
19 photograph taken of you and Mr. Kenner outside the
20 Attorney General's Office in Los Cabos on June 15th.

21 Does that refresh your recollection, that
22 you in fact were swearing -- or giving sworn testimony in
23 support of Mr. Kenner's criminal action just a few weeks
24 ago?

25 A. We were -- I gave my testimony, as I mentioned

49

1 earlier, one about nine months ago and one about four
2 months ago. And I was requested by the attorney to come
3 back to the office to do -- again, I don't think it was a
4 brand-new testimony, but it was --

5 The -- the attorney had mentioned to me that
6 someone had paid off -- what do you call it -- a
7 government official, so they had to do the filing again.

8 Q. Who paid off a government official?

9 A. I don't know. Somebody paid off a government
10 official, so the initial filing had to be redone. So the
11 two filings that I said I had done had to be redone.

12 Q. And you're talking now about the criminal
13 complaint brought by Mr. Kenner and some other investors?

14 A. I believe that's what it was, yes.

15 Q. And that someone had paid off a government
16 official in connection with the filing of that criminal
17 action?

18 A. That's what I was told, yes.

19 Q. Who told you that?

20 A. My attorney.

21 Q. Did Mr. Kenner discuss that with you?

22 A. Yes.

23 Q. What did he tell you?

24 A. He told me he didn't understand how something
25 like that could happen.

50

1 Q. Did he tell you who paid off this government
2 official?

3 A. No.

4 Q. Did he -- does -- do you -- did he mention that

5 he knew who paid off the government official?

6 A. Who's -- who's -- who mentioned?

7 Q. Mr. Kenner.

8 A. No.

9 Q. Did any of the -- did anyone there mention who is
10 alleged to have paid off this government official?

11 A. They had just mentioned -- let's see, my attorney
12 mentioned --

13 MR. AUGUSTINE: I'll caution you not to
14 testify to anything that your attorney in Mexico told you.
15 That's attorney/client privilege.

16 THE WITNESS: Thank you.

17 MR. AUGUSTINE: So if you got the
18 information from some other source, you can testify to it.
19 But if it came from your attorney, I would instruct you
20 not to answer -- caution you not to answer.

21 THE WITNESS: Thank you. It came from my
22 attorney.

23 Q. BY MR. LAKE: Did anyone explain to you why they
24 had to refile or -- is that what you said, they had to
25 refile the action?

2 But they had to -- to reenter the file.

3 Q. So were you in fact, then, in Cabo a few weeks
4 ago, on June 15th?

5 A. I believe so. I'm a resident of --

6 Q. Okay.

7 A. -- Cabo.

8 Q. Do you know what the status of that criminal
9 action is now?

10 A. No.

11 Q. Do you know whether the government is bringing
12 any charges against anyone as a result of this claim that
13 someone paid off a government official?

14 A. The attorney is working on determining what's the
15 next step.

16 MR. LAKE: Do you want to take a break or do
17 you want to keep going?

18 THE WITNESS: I would like a -- a water
19 would be great.

20 MR. LAKE: All right.

21 THE WITNESS: So, yeah.

22 MR. LAKE: Why don't we take a break.

23 THE VIDEOGRAPHER: We're off the record at
24 10:18.

25 (Recess.)

52

1 THE VIDEOGRAPHER: We're back on the record
2 at 10:28.

3 Q. BY MR. LAKE: Mr. Gaudet, you mentioned this
4 employment you had with Mr. Kenner's company for the
5 couple of months. Other than that -- which we've already
6 discussed -- have you ever received any other payments
7 from Little Isle IV or Ula Makika?

8 A. The agreement that I had with Mr. Jowdy was to
9 include any related income. So he encouraged me to
10 receive income from other sources.

11 Q. Which agreement are you talking about?

12 A. My labor agreement with the company, Diamante.

13 Q. This was an oral agreement, you said?

14 A. Correct.

15 Q. Okay. And what was -- what was the term of the
16 oral agreement you just referred to?

17 A. One of the terms --

18 Q. Okay.

19 A. -- was that Mr. Jowdy wanted it to include income
20 from -- income from related sources, related sources or
21 other -- other sources.

22 Q. I'm not sure I know what you mean by that. He
23 wanted it to include income from other sources?

24 A. He wanted our agreement to include moneys from
25 other sources.

53

1 Vague, yes, I agree.

2 THE COURT REPORTER: I'm sorry, say that
3 again. They, I guess? Or vague?

4 THE WITNESS: Vague.

5 THE COURT REPORTER: Vague, I guess? Okay.

6 THE WITNESS: Vague.

7 Q. BY MR. LAKE: Do you mean to say that he
8 encouraged you to work for other people at the same time
9 he was working for you?

10 MR. AUGUSTINE: Objection. I think --

11 THE WITNESS: Yeah.

12 MR. AUGUSTINE: -- you misspoke on that
13 question. You said working for you, rather --

14 MR. LAKE: Yeah, okay.

15 MR. AUGUSTINE: -- than working for
16 Mr. Jowdy.

17 Q. BY MR. LAKE: I'm trying to understand your
18 previous answer. Do you mean to say that Mr. Jowdy was

19 encouraging you to work for other companies at the same
20 time you were working for his company?

21 A. Not that specific. Other sources. He wanted it
22 to be other sources. And I think he felt the pressure to
23 fulfill the agreement.

24 Q. Okay. So when you say that -- when you said that
25 the agreement was to include income from other sources,

54

1 what you mean is that he told you that he didn't mean to
2 prevent you from getting income from other sources?

3 A. Again, he wanted our agreement -- my agreement
4 with Diamante and himself -- to not be limited to income
5 received from Diamante, but to include other sources.

6 Q. Do you mean that he would pay you income from
7 other sources?

8 By that I mean Mr. Jowdy?

9 A. Yeah. No, not limited to, but, yeah, possible.

10 Other sources being a big --

11 Q. I'm struggling to understand what it is you're
12 trying to express.

13 A. Okay, I'll repeat.

14 My agreement with Mr. Jowdy was expressed by
15 him that he wanted moneys that I made from other sources

16 to be included in the -- in the agreement.

17 And it was after some time, because I

18 believe he was feeling that it might be difficult to

19 fulfill the agreement.

20 Q. So when you say included in the agreement, does

21 that mean that income you earn from other sources would

22 count against the money he was obligated to pay you under

23 the agreement?

24 A. I have to make an assumption on that as well, or

25 during that time frame. My eyes looked the same as yours,

55

1 confused, because it was -- it was a very --

2 He requested it to be a broad agreement,

3 that I would receive moneys from other sources. I

4 assumed, and I don't know if he assumed that, but sources

5 related to what he's dealing with. Or company --

6 company-related sources, I suppose, would be fair.

7 Q. Okay.

8 A. Again, it didn't formally get done in writing.

9 It was a verbal agreement and I agreed to the terms.

10 Q. Do you mean -- I mean, did you understand him to

11 mean that it was okay for you to get money from other

12 sources? Is that what you mean by that?

13 I'm trying to understand what you -- what
14 you thought he was agreeing to do. Was he saying, it's
15 okay for you to go get money from other sources at the
16 same time you are working for me? Or was he saying, if
17 you do get money from other sources while you're working
18 for me, that counts against the money I am obligated to
19 pay you?

20 A. Say that again. That was -- I think that was
21 well said, but say it again for me, please. Repeat that.

22 MR. AUGUSTINE: Why don't you read it back.
23 THE WITNESS: Yeah, read it back. That was
24 a --

25 MR. LAKE: Why don't you go ahead and read

56
1 it back. I don't know if I can say it again.

2 (The requested portion of the record was
3 read back by the court reporter.)

4 MR. HARPER: I'll object to the form of that
5 question.

6 MR. LAKE: Let me try this another way.

7 THE WITNESS: Yeah, thank you.

8 Q. BY MR. LAKE: How much did he promise to pay you
9 in this agreement?

10 MR. HARPER: Object to form.

11 THE WITNESS: Four years, two million.

12 Q. BY MR. LAKE: Okay. Was he saying that if, while
13 you're working for me, you go and earn \$500,000 from
14 another source, that means I only have to pay you
15 \$1.5 million?

16 MR. HARPER: I'm going to object. We're not
17 here about an employment dispute between Mr. Gaudet and
18 Mr. Jowdy. Let's move on.

19 MR. LAKE: I'm just trying to understand
20 the -- what he's -- what he's testifying.

21 MR. HARPER: Well, you can understand it if
22 you represent Mr. Jowdy in an employment dispute between
23 Mr. Gaudet and Mr. Jowdy.

24 THE WITNESS: Put on the record, again, I
25 felt that he -- he was becoming very concerned that he was

57
1 going to fulfill our agreement. So I think he was looking
2 for many ways to say here's ways that we can make our
3 agreement be fulfilled.

4 Q. BY MR. LAKE: Okay. Did Mr. Jowdy know you had
5 this other agreement with Mr. Kenner?

6 MR. HARPER: Object to form.

7 MR. AUGUSTINE: I'll object, too. I'll
8 instruct the wit -- my client not to answer because
9 it's -- If you can tie his employment to this document,
10 then I'll -- I'll let him answer the questions. But he's
11 already testified that his employment postdated this
12 document. So --

13 MR. HARPER: The scope of the deposition is
14 the authenticity of the document. So far, I don't know if
15 you've asked a single question about the authenticity of
16 the document.

17 MR. AUGUSTINE: Right. I'll be happy to on
18 cross-examination.

19 MR. LAKE: Let's mark this next exhibit.

20 Q. BY MR. LAKE: You lived in Cabo in December 2004;
21 is that right?

22 A. December 2004, correct.

23 MR. LAKE: Okay. Mark that.

24 (Deposition Exhibit No. 3 was marked for
25 identification by the court reporter.)

1 MR. LAKE: What number is this?

2 THE COURT REPORTER: 3.

3 Q. BY MR. LAKE: Okay. I've marked -- we've marked

4 as Exhibit 3, it's just a blank calendar that shows the
5 months of November 2004 and December 2004. I just think
6 this might be helpful as we go through the time frame and
7 talk about the -- what happened during this critical
8 weekend.

9 A. Yes.

10 Q. So we can just kind of have that here.

11 Tell me what you remember about this event
12 that took place in early December of 2004.

13 A. At the time I was employed by a company named
14 Querencia, which is the location of where I met -- first
15 met Mr. Jowdy.

16 Q. Querencia is a place?

17 A. Is a golf/real estate project in Cabo San Lucas.

18 We had spent several -- or much time
19 together from our initial meeting. And at some time in
20 probably October or November Mr. Jowdy invited me to
21 attend a golf function in Cabo. The golf function was to
22 be a promotion for a project that he is an owner of in
23 northern Baja, Mexico, and a project that he was hopeful
24 to be an owner of in Cabo.

25 The event was primarily a golf event in a

1 very social-like atmosphere. In other words, it was a

2 fun-natured golf event that had related social.

3 So I was invited to attend this event in

4 December, which was labeled Diamante Cup. The event was

5 to take place the first weekend of December. First

6 weekend, last week of, plus or minus.

7 I recall, because I was shared itineraries

8 and schedules, that there was several people to arrive to

9 the area, Cabo, I believe sometime in the first week of

10 December, and golf was to -- Well, it was going to start

11 off with a welcome reception and golf to follow,

12 et cetera.

13 Q. Okay. Were you employed by either Mr. Kenner or

14 Mr. Jowdy at that time?

15 A. I was not.

16 MR. LAKE: Okay. Let's mark this.

17 (Deposition Exhibit No. 4 was marked for

18 identification by the court reporter.)

19 MR. LAKE: This is 4?

20 THE COURT REPORTER: Yes.

21 Q. BY MR. LAKE: Okay. Mr. Gaudet, I'm handing you

22 Exhibit 4, which is a sort of agenda for something called

23 the Annual Diamante Cup 2004, Diamante Del Mar. And I

24 think this is the same event that you were just
25 describing.

60

1 Is that right?

2 A. I believe I recognize that, yes.

3 Q. Okay. Do you recall having seen this -- this
4 agenda before? Or one like it?

5 A. Yes, one like it.

6 Q. Okay. Go ahead and take a look and scan through
7 it here and see if you think that this refreshes your
8 recollection or if this looks like it was -- may have been
9 an accurate description of what happened that weekend.

10 A. Yes.

11 Q. Were you invited to -- to this weekend -- I don't
12 know if guest is the right word. But you were sort of
13 invited as a guest rather than as an employee that was
14 tasked with performing some specific services?

15 A. I guess, yes. As an employee soon to be.

16 Q. An employee of?

17 A. Employee of Diamante soon to be.

18 Q. Okay. Did -- had Mr. Jowdy indicated to you that
19 you were soon to be an employee of Diamante? Is that what
20 you meant?

21 A. We had discussed several times of when the right
22 opportunity would be for me to be a formal employee of
23 Diamante.

24 Q. A form -- did you say former?

25 A. Former. Not former. I said formal.

61

1 Q. Oh, formal. Okay.

2 A. Yes, to be an employee of.

3 Q. So were you asked to do anything during this
4 weekend or were you just kind of there to enjoy the -- the
5 celebration?

6 A. I wasn't given a task list specifically, but I
7 was more of a -- I would have been represented as more of
8 an employee than a guest, although everything that I was
9 participating in was more guest oriented.

10 Q. Uh-huh. So you would kind of mingle with the
11 guests and talk -- talk up the project and things like
12 that?

13 A. Golf is my background, so, you know, I had a very
14 easy opportunity to speak to many of the guests.

15 Q. Okay. And Diamante Del Mar, is that the project
16 in northern Baja that you were referring to?

17 A. I never referred to any project, so I don't

18 understand the question.

19 Q. Or the -- I think you mentioned there was a golf
20 course in northern Baja.

21 A. Ah, yes.

22 Q. Okay. Is that Diamante Del Mar?

23 A. Yes.

24 Q. Okay.

25 A. Ken had taken me up there to visit that site,

62
1 that project. So, yes, that's Diamante Del Mar in
2 northern Baja, Mexico, yes.

3 Q. Okay. So it was the -- would it be fair to say
4 that sort of the primary goal of this weekend was to
5 promote that project because the Cabo project wasn't
6 really --

7 A. In my belief it was double-edged for sure.

8 Because there was a couple sites being considered in Cabo
9 to be the future Diamante Cabo San Lucas.

10 Q. Had a specific site been selected already -- or
11 purchased in Cabo at that time?

12 A. Let me try and recollect. Ken had pursued
13 ownership in the project that I was formerly with,
14 Querencia. That pursuit went on for several months before

15 this particular event.

16 Subsequently, the deal did not happen and

17 another property was being looked at and negotiated on in

18 the region.

19 So I recall that in December of 2004 that

20 the excitement was not only related to Diamante Del Mar in

21 northern Baja, excuse me, but also a hopeful Diamante

22 project in Cabo.

23 Q. In December 2004 Mr. Kenner and Mr. Jowdy did not

24 live in Cabo; is that right?

25 A. They had a house. I don't know who the owner of

63

1 the house was, but they had a house. There was a house.

2 Q. Okay. Did you understand that they were flying

3 in to Mexico for the purposes of this weekend from the

4 U.S. or --

5 A. Who is they?

6 Q. I'm sorry, Mr. Kenner and Mr. Jowdy.

7 A. For certain Ken, yes.

8 Q. Okay. But for Mr. Jowdy, did you really know at

9 all the --

10 A. For Ken Jowdy.

11 Q. Oh, for Ken Jowdy?

12 A. For -- Yes.

13 Q. And for Mr. Kenner, did you know anything about
14 his travel plans?

15 A. No.

16 Q. Did you know specifically when Ken Jowdy would be
17 arriving and departing? I mean, did you actually have a
18 copy of his itinerary?

19 A. No.

20 Q. Do you know when Mr. Kenner arrived in Mexico for
21 this weekend?

22 A. No.

23 Q. During the events on this agenda --

24 Well, let me ask this. When is the first
25 time during this weekend that you remember seeing

64

1 Mr. Kenner?

2 A. Hmm. Is it difficult for everybody to go back
3 five years?

4 Q. It is. It is.

5 A. Okay. Just checking.

6 Q. And if you can't remember, that's fine. I just
7 wanted to know if you could remember.

8 A. I don't recall. But if I do, I'll certainly put

9 that out there.

10 Q. Okay. Do you remember the first time during this
11 weekend when you saw Mr. Jowdy?

12 A. You know, I was in and out so often because,
13 again, I was still employed by Querencia. So when I had
14 free time, I -- I -- I recall visiting the golf course.

15 So if I go back to the schedule -- I can't
16 confirm if I had seen Mr. Jowdy on the Wednesday per the
17 schedule, but I recall -- I recall visiting the golf
18 course that they played at on more than one occasion. So
19 I think, again, by virtue of the schedule, probably
20 Thursday. But more than likely, because of how my
21 invitation was, I was probably at the --

22 Tomatoes restaurant, outside terrace. I'm
23 just -- I'm just looking at the location of the event the
24 first night. Outside terrace near Tomatoes.

25 I may have been at the evening social on

65

1 Wednesday, but I don't recall that. I was definitely at
2 the golf course the next day. I did make a visit to the
3 golf course. I'm good friends with all the people that
4 run the -- the golf facilities down in the region. Well,
5 in particular the -- where the golf course -- where the

6 golf event was held. So I definitely had gone to the golf
7 course. That would have been the first time.

8 Q. Okay. We're going to talk a minute about the
9 Friday evening get-together at the house.

10 A. Okay.

11 Q. But first I want to ask you, do you remember --
12 prior to that Friday-evening gathering at the house, do
13 you remember seeing Mr. Jowdy and Mr. Kenner together
14 prior to that time?

15 A. No.

16 Q. Okay. This get-together on Friday night, on the
17 agenda it shows -- looks like 7:00 p.m. dinner at Casa de
18 Diamante. What is Casa de Diamante?

19 A. Casa Diamante would be the house that -- at the
20 time I didn't know whose house it was, whether it was
21 Mr. Jowdy's, the company. So it was -- I was -- I was
22 assuming that it was Ken's house --

23 Q. Okay.

24 A. -- in Cabo.

25 Q. The people who were coming down for this event,

3 A. I believe both.

4 Q. Okay.

5 A. The house is --

6 Q. There were a lot of people, I guess.

7 A. The house is a large house.

8 Q. Uh-huh.

9 A. Has seven bedrooms. And I believe that the house

10 was full, so -- And there were also guests staying at the

11 Sheraton hotel. So both.

12 Q. Okay. Were there guests staying at any other

13 hotel that you knew of?

14 A. I assume so, yes.

15 Q. Did you know where Mr. Kenner was staying?

16 Whether he was staying at the house or at a hotel?

17 A. No.

18 Q. Did you know where Mr. Jowdy was staying?

19 A. I assume at the house.

20 Q. Okay. But you didn't know for sure?

21 A. I was -- I believe the house was Mr. Jowdy's, so

22 I believe he had a room in the house.

23 Actually, I know which room it was.

24 Q. All right. Describe for me the scene or what was

25 going on at the house that evening, on Friday,

1 December 3rd.

2 A. Friday.

3 Q. Were you there at the house that evening?

4 A. Yes, I did get to the house.

5 Q. When did you get there, if you remember?

6 A. Hmm. It would have been sometime in the early
7 evening.

8 Q. Was it still light when you arrived?

9 A. Still light out. I don't recall if it was light
10 when I arrived.

11 Q. Describe for me the scene of what was going on at
12 the house when you arrived.

13 A. It was definitely a social atmosphere. Several
14 people around preparing for a dinner. I'm trying to
15 remember if there was caterers and stuff. I don't recall
16 some of those specifics. Social atmosphere.

17 You know, seven-bedroom house, so there was
18 at least that many people. I believe there was many more
19 than that at the time.

20 Q. How many levels are in this -- this house?

21 A. Five, five levels.

22 Q. Okay. Is -- is there one level that is kind of

23 like the main level where there's kind of an open area

24 where most of the people were mingling in?

25 A. There is a main floor, yes.

68

1 Q. Okay. Now we get to play art student. And I

2 want you to sort of draw a little sketch of the floor plan

3 of the -- of the main floor of the house --

4 A. Whoa.

5 Q. -- if you can. You can use my pen if you want.

6 A. I'd be more than happy to.

7 Q. I just kind of want to get a sense of what the

8 house is shaped like and where the rooms are.

9 A. Hope you have good visual imagination.

10 Obviously we're expecting this to be pretty

11 raw, right?

12 Q. Oh, of course.

13 Okay. This is -- this is helpful. I

14 think --

15 A. Is that close?

16 Q. -- you had indicated --

17 Where were you when you signed the document?

18 A. I was -- I never put the stairwell in here, but

19 this -- I'll call it the main --

20 Q. Kind of the main level?

21 A. Yeah.

22 Q. Okay.

23 A. Does that kind of make sense?

24 Q. Yeah.

25 What I would actually like is to have kind

69

1 of a top view of what the floor plan looked like on that
2 main level, where the -- I don't know, the dining room,
3 the kitchen, whatever.

4 A. Okay.

5 Q. That's kind of what I was --

6 A. Okay.

7 Q. -- hoping for.

8 A. Let me do that. Do you mind if I save paper and
9 use the other side?

10 Q. Well, that would be fine.

11 Actually, you know what, let's do a separate
12 page.

13 A. Separate?

14 Q. Just a --

15 A. Okay. Can I borrow your pen again?

16 Q. Sure.

17 A. Floor plan.

18 Q. And, again, this is just -- can be rough.

19 A. Yeah.

20 Q. It's just what you recall.

21 A. Yeah, I'm just -- I don't think it's changed in a
22 lot of years, so --

23 Q. Just kind of want to get a sense of where things
24 are.

25 A. Great.

70

1 I actually might be good at this.

2 Well, without overdoing it, can you confirm
3 that this is space-oriented enough?

4 Q. Yeah. That's good.

5 So it was essentially one large, open room?

6 A. Yes.

7 Q. And --

8 A. This is -- this is to the outside.

9 Q. Oh, okay. Is that a window or --

10 A. Yes, a window.

11 Q. Okay.

12 A. Here is the door to the outside. And this is a
13 door to another building.

14 Q. Okay. This, where I'm putting the letter A, is

15 that a wall?

16 A. That's a -- what would you call it? A nook

17 counter. Countertop.

18 Q. Okay.

19 A. Kitchen countertop.

20 Q. So you can see over the top of it?

21 A. Yes.

22 Q. And what is this where I'm putting the letter B?

23 A. That's a sofa couch.

24 Q. So would it be correct that, if you're in this

25 room you can pretty much see what's going on anywhere in

71

1 the room?

2 A. Yeah, if you're -- if you're facing the right

3 direction, sure.

4 Q. Okay. Okay. And this, where I put the letter C,

5 what is that?

6 A. That's a large table, dining table.

7 Q. Okay. And right here where I put the letter D --

8 A. Yes.

9 Q. -- what is that?

10 A. That's a window.

11 Q. Okay. Where is the front door or the --

12 A. This is a big sliding glass, so it's wide open.

13 The front door is down multiple levels.

14 Q. Okay. So if someone were to enter the house,

15 where would they come in?

16 A. Can I borrow that?

17 Q. Sure.

18 A. This is the other building. Let's see. This is

19 probably bigger, like this. Kind of plus or minus like

20 this. There's stairs somewhere in this proximity.

21 Q. Uh-huh.

22 A. And then your natural walking path is like this

23 to this or this to this. There's also, I think, another

24 stairwell somewhere over here.

25 Q. Okay. That's good.

72

1 A. But this would be kind of like a -- There's an

2 elevator right here. So this is --

3 Q. So if someone was to arrive from the street, this

4 is where they would come in?

5 A. Yes.

6 Q. Okay. I'll put a letter E here so we'll know

7 where we're talking about.

8 A. Entry, okay.

9 Q. Okay, good.

10 Prior to the time that you first saw

11 Mr. Kenner on the evening of Friday, December 3rd --

12 A. Uh-huh.

13 Q. -- had you spoken to Mr. Jowdy? Here at the

14 house, I mean.

15 A. Yeah. If I was at the house, we definitely would

16 have spoken, sure.

17 Q. Okay. Do you actually remember having spoken to

18 him or --

19 A. Yeah. I believe he introduced me to a few of the

20 guests, yes.

21 Q. Okay. When did Mr. Kenner arrive at the house on

22 December 3rd?

23 A. I wouldn't -- I don't wear a watch, so I don't

24 know the time specifically.

25 Q. It's the Cabo lifestyle; right?

73

1 A. You know, I'm just not a --

2 Q. Okay. Well, do you remember if it was still

3 light or dark outside?

4 A. Boy. I don't recall the -- whether it was light

5 or bright out, don't recall.

6 MR. LAKE: Okay. The video guy says we need
7 to change the tape.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: This marks the end of
10 Tape 1. We're off the record at 11:02.

11 (A recess was taken and Deposition Exhibit
12 Nos. 5 and 6 were marked for identification by the court
13 reporter.)

14 THE VIDEOGRAPHER: This is Tape 2 in the
15 videotape deposition of Robert Gaudet. We're back on the
16 record at 11:09.

17 Q. BY MR. LAKE: Okay. Mr. Gaudet, we're continuing
18 to talk about the get-together at the 33 Pedregal house on
19 the evening of December 3rd.

20 At the time Mr. Kenner arrived at the house,
21 about how many people were there at the house, would you
22 say?

23 A. Hmm. Maybe 15 to 20. I have nothing to base
24 that on other than what my memory is kind of telling me.
25 15 to 20.

2 evening it was?

3 A. Late afternoon, early evening.

4 Q. Was the plan that all of the people who were
5 invited for the weekend were going to come to this dinner
6 at the house that evening?

7 A. Yes. I believe that was the plan.

8 Q. Had they set up tables or -- What did the scene
9 in the house look like?

10 Let me start by asking you, about how many
11 people were invited on this -- to this golf weekend?

12 A. There would have been --

13 MR. AUGUSTINE: Let me let me object on the
14 grounds of speculation. Invited, my client didn't invite
15 anybody. Maybe --

16 MR. LAKE: Okay. Well --

17 MR. AUGUSTINE: Maybe better is who -- how
18 many people attended.

19 MR. LAKE: That's fine.

20 Q. BY MR. LAKE: How many -- to your knowledge,
21 about how many people attended that golf weekend?

22 A. I had seen an invite list, actually. I don't
23 know how many total were invited, but I believe there was
24 40 golf players in the event, plus or minus. And to the

25 social events, probably in that number, 40. Maybe more,

75

1 because I think there might have been some female

2 companions as well; girlfriends, et cetera.

3 Q. So if everybody from the weekend was getting

4 together for a dinner together, which I think this was,

5 about how many people were we talking about?

6 I mean, was it maybe 80 people or 70 or --

7 A. Yeah, yes, I would agree with you. Probably

8 70-ish.

9 Q. Had they set up tables at the house for the

10 people to sit at when they ate dinner?

11 A. Yes.

12 Q. Okay. Look at your -- Let's look at your little

13 floor plan you drew which we've marked as Exhibit 6.

14 A. Okay.

15 Q. Can you show me where the table -- where they had

16 placed tables for the dinner?

17 A. This is a path.

18 Q. Uh-huh.

19 A. This is the pool. And if I extended this map,

20 there's a pretty significant amount of deck space over

21 here. That would be the location of all of the extra

22 tables and chairs.

23 Q. Okay. So it would be on the -- on the other

24 side -- the other side of the pool, further away from the

25 house?

76

1 A. Yes.

2 Q. Were there tables set up there at the time

3 Mr. Kenner arrived?

4 A. I believe, yes.

5 Q. Were they like folding tables or --

6 A. I didn't look at the structure, but I would

7 assume some type of portable table.

8 Q. And do you remember whether the dinner was

9 catered?

10 A. I believe it was catered.

11 Q. Do you know where the food was being prepared?

12 A. On that particular case, no.

13 In my own experience, a lot of times food is

14 prepared off-site and then brought in and put in a buffet

15 style with heat trays and all that sort.

16 And I'm just trying to recall, and I believe

17 that it was actually similarly set up, in a typical

18 larger-group format, which is, you know, a table with a

19 buffet style. And I think -- You know, now it's blending
20 a little bit.

21 There was two kitchens in the home. So
22 quite possibly one of the kitchens was utilized for some
23 type of preparation.

24 Q. Uh-huh. At the time Mr. Kenner arrived that
25 evening, was the -- was the food already being set up:

77
1 the buffet, the heating trays and that -- that sort of
2 thing?

3 A. Was it already set up?

4 Q. Was it already set up -- being set up or --

5 I keep ending my sentences with the word
6 "or." I have to stop doing that. Sorry.

7 I'm just trying to get a picture of --

8 A. Yeah.

9 Q. -- what it looked like when Mr. Kenner showed up.

10 A. Yeah. You know, I didn't walk the path that he
11 walked. I don't know what it looked like for him, but --

12 Q. Well, I mean --

13 A. -- I will try and give you a reference to the
14 whole environment.

15 6.

16 I'm sure it was a fairly -- a fair amount of

17 the setup was probably complete at that time.

18 Q. Do you know where they set up the buffet?

19 A. You know, when it comes to those specifics,

20 again, I wasn't directly involved. So I don't recall

21 necessarily where everything was stationed. You know,

22 it's easier for me to speak of where I was as opposed to

23 what was where.

24 Q. Okay. Do you remember where you were when

25 Mr. Kenner arrived?

78

1 A. I would have been somewhere in this area right

2 here.

3 Q. Between the house and the pool?

4 A. Yes.

5 Q. Pointing to there?

6 Was there anything on -- when Mr. Kenner

7 arrived, was there anything on this table that has the

8 letter C on it?

9 A. Three -- three Diet Cokes, two -- No, I'm

10 kidding. I was hoping I was going to be funny at some

11 point.

12 Q. With lemon?

13 A. With lemon. Sorry.

14 It's surrounded by chairs. It was

15 surrounded by chairs. I recall seeing something that was

16 referencing this logo.

17 Q. On the top of the Exhibit 4 there?

18 A. I'm not saying it was a document. There was like

19 promotional posters or visual posters.

20 Q. Okay.

21 A. I'm trying to remember if they were on the table

22 at the time.

23 I believe the table was clear.

24 Q. Did you see Mr. Kenner arrive?

25 A. I seen him at the home. I would not be able to

79

1 confirm anything related to his arrival.

2 Q. Okay. So you just sort of remembered all of a

3 sudden he was there? You don't know when -- you didn't

4 see him walk in the house?

5 A. Correct.

6 Q. When you first saw Mr. Kenner, do you know where

7 in the house you were standing or sitting?

8 A. Yeah. I believe I was standing in this area --

9 Q. Okay.

10 A. -- as I just mentioned.

11 Q. Okay. Between the pool and the house?

12 A. Yeah, somewhere in that front entryway. Which
13 is a comfortable spot to stand.

14 Q. Where was Mr. Kenner when you first saw him?

15 A. I can't confirm specifically where I seen him
16 other than I know I spent a lot of time in this area that
17 I pointed out. And the first time I -- I was able to
18 identify him being at the house would have been mixed with
19 people. Nothing monumental, just in the population.

20 Q. Right. About how much time passed between the
21 time when you first saw Mr. Kenner and the time when the
22 document was executed?

23 A. When I first seen him -- Not very much. Not very
24 much.

25 Q. Does that mean like ten minutes or 30 seconds? I

80

1 just want to understand what you -- what you remember.

2 A. It just seemed like a short time. Not an hour.

3 Less than an hour.

4 Q. Okay. Do you think it was more than a half hour?

5 A. The question again was, more than a half hour?

6 Q. Was it more than a half hour, do you think?

7 A. It may have been, but it didn't feel like that

8 from the first time I was able to say --

9 Q. Uh-huh.

10 A. -- there he is.

11 Q. So if you had to give your best estimate of how

12 long you think -- how long a period passed between when

13 you first saw him and when the document was signed, what

14 would be your best guess?

15 A. Less than a half an hour.

16 Q. Okay. Prior to this -- prior to this

17 December 4th had you heard anything about a loan agreement

18 between Mr. Kenner and Mr. Jowdy?

19 A. No.

20 Q. So you're there at the party and there's people

21 milling around. About how many people were there at that

22 time? Did you say?

23 A. It was a moving target. You know, when I

24 initially got there there might have been 15 to 20. And,

25 you know, we agreed that maybe up to 70. So it was a

1 moving target. I never did a head count.

2 Q. About how much time passed between the time when

3 you arrived at the house and the document was signed?

4 Just a rough estimate.

5 Had you been there an hour or two hours?

6 A. I'd say I was there for at least an hour.

7 Q. All right. So at some point did -- how did the

8 topic of the loan agreement first come up?

9 You're there -- everyone's there at the

10 party.

11 A. I wasn't -- I wasn't told anything --

12 Q. Okay.

13 A. -- specific or related to a loan document.

14 Q. Okay. What happened? I mean, just -- I just

15 want to know what -- how it sort of developed after that.

16 A. You know, again, I'm in this little area here and

17 I was called over.

18 Q. Okay. Who called -- who called you over?

19 A. Mr. Jowdy.

20 Q. Where was he standing?

21 A. Somewheres in this area.

22 Q. Okay. I'll put --

23 A. Just opposite of C.

24 Q. I'll put a letter F there so we know where we're

25 talking about.

1 A. Okay.

2 Q. Over near the table?

3 A. Uh-huh.

4 Q. Was anyone else standing there with him?

5 A. I recall -- whether you call it with or nearby,

6 there was a couple people nearby, yes.

7 Q. Okay. Do you -- do you know who those people
8 were?

9 A. One was -- one was Phil.

10 Q. Phil Kenner?

11 A. And the others, I don't know if I could identify.

12 Q. Okay.

13 A. But there was people around.

14 Q. Did you mean Phil Kenner?

15 A. Yes.

16 Q. All right. Were the other people who were
17 standing there -- I mean, were they just kind of standing
18 nearby and kind of not paying attention or were they
19 involved in what was going on with the document?

20 A. No, it was -- You know, nothing about the
21 document was known at that moment. So if we say
22 chronological order of happenings, it's irrelevant. But
23 it was -- there was people in the -- that area that you

24 identified as F --

25 Q. Uh-huh.

83

1 A. -- those people were in a very social
2 environment. You know, some drinking and just
3 socializing, talking. So conversation, music in the
4 background. You know, it wasn't -- it wasn't a calm
5 environment. There was a lot of things going on.

6 Q. Okay. So Mr. Jowdy called you over, I think you
7 said.

8 A. Yes.

9 Q. Did he just call you by name and ask you to come
10 over?

11 A. Yes.

12 Q. Okay. At that point did he -- did he say what he
13 wanted you for?

14 A. Yeah. He said he just wanted me to take a look
15 at something.

16 Q. Okay. And so then you walked over to the table?

17 A. Yes.

18 Q. All right. What happened next?

19 A. What happened next was I seen a document that
20 looked just like this.

21 Q. You are pointing to the second page of Exhibit 1?

22 A. The second page. I recall there only being one
23 piece of paper. Had no idea what it was other than, here,
24 please sign there.

25 Q. It was a single piece of paper?

84

1 A. Single piece of paper.

2 Q. Okay.

3 A. There might have been a briefcase nearby or bag.
4 There was other stuff around, but all I'm aware of or all
5 of I seen -- all I seen was a single piece of paper, just
6 like that.

7 Q. Okay. Did it -- do you actually remember there
8 being a briefcase or are you not sure about that?

9 A. I recall a briefcase or a bag or --

10 Q. Was it sitting on the table?

11 A. I -- I don't think there was anything sitting on
12 the table. There was nothing sitting on the table.

13 Q. Was the whole table --

14 A. I just remember when I leaned over to the
15 table -- to the table, which was a large table --

16 Q. Uh-huh.

17 A. -- not as large as this, but a large wooden

18 table, I just remember -- I don't know why I can remember
19 this, but I just remember kicking something out of the way
20 as I approached the table. Kicking or stepping on
21 something.

22 Q. Something that was on the floor?

23 A. Yes.

24 Q. Okay. And that's what you think was a bag or the
25 briefcase?

85

1 A. Yes.

2 Q. Okay. So was there anything at all on the
3 surface of the table other than this single piece of
4 paper?

5 A. I don't recall anything else.

6 Q. All right. So when you were called over, did
7 someone speak to you after that or --

8 I mean, they --

9 A. When I was --

10 Q. -- called you over to the table. I just want to
11 know what happened next.

12 A. I was called over. Nothing specific other than,
13 you know, "You know Phil."

14 Q. Was this Mr. Jowdy speaking?

15 A. Yes.

16 Q. Okay.

17 A. Again, you know, you try your best to recall

18 specific pieces of conversation, but --

19 Q. Uh-huh.

20 A. -- "You know Phil." "I just need you to quickly

21 witness this for me." And that was -- I don't think there

22 was much more conversation than that.

23 Q. Did Mr. Kenner say anything?

24 A. Not to me.

25 Q. Did he say anything to Mr. Jowdy while you were

86

1 standing there?

2 A. I don't recall. I don't think so. I really

3 don't recall.

4 Q. Did Mr. Jowdy tell you what it was that -- what

5 the document was?

6 A. A lot of our conversation -- myself and

7 Mr. Jowdy -- was relating to my hopeful employment with

8 the company. So there was a lot of excitement about many

9 things going on --

10 Q. Uh-huh.

11 A. -- the event, financing coming up, you know.

12 Hopeful to -- to -- you know, I referenced earlier that
13 there was a property that they were hoping to be a
14 Diamante Cabo property. So there was just a lot of
15 excitement in the air about things moving forward.

16 Q. Did he tell you what the -- what that document
17 was that you were signing?

18 A. No, no.

19 Q. At that point did you know Mr. Kenner?

20 A. Not very well. I had met him a few times.

21 Q. Uh-huh.

22 A. I knew he was associated to the Diamante
23 companies -- company/companies.

24 Q. And would you say that you knew Mr. Jowdy at that
25 point?

87

1 A. We had spent quite a bit of time together, yes.

2 Again, we had spent, you know, time talking about my
3 employment and very specific strategies about me resigning
4 from my former place of employment to join him with
5 Diamante.

6 Q. You had mentioned that the single piece of paper
7 that was on the table looked like this second page of
8 Exhibit 1.

9 A. Yes.

10 Q. When you say that it looked like it, did you mean
11 that -- I mean, do you recognize -- did it have, for
12 example, the number six at the top? Do you remember that?
13 Or do you just remember that it was a sheet that had some
14 signature lines on it?

15 A. I remember the bottom half of the sheet. I don't
16 recall the top half. I don't recall if there was a six on
17 it. I remember very specific, though, there was -- yeah,
18 I remember very specifically it was an interesting
19 document because I recognized, you know, Little Isle,
20 which looked confusing, different. And that's all. I
21 recognized there was names on it and I recognized these
22 names were on it. And I recognized the line for a
23 witness.

24 Q. Do you remember whether there was text above the
25 signature line on the page?

88

1 A. There was definitely text on the top of that
2 signature, yes.

3 Q. But do you remember anything about what that text
4 said?

5 A. I didn't read it, no.

6 Q. Did you read any of that text?

7 A. Did not.

8 Q. At the time that you walked over and first saw

9 this sheet of paper, had it already been signed by anyone?

10 A. There was -- The bottom half was already
11 completed.

12 Q. What do you mean by the bottom -- you mean --

13 what do you mean by the bottom half?

14 A. The bottom half -- the two signatures and the
15 date was already on there.

16 Q. You mean, the two signatures under "Lenders"?

17 A. Under "Lenders," yes.

18 Q. Okay. Do you remember whether the document that
19 you saw had a line that said the word "Lenders"? Do you
20 remember that specifically?

21 A. I'm just going through my photogenic memory --

22 Q. Okay.

23 A. -- and I think I found it, yes.

24 Yes, I do recall.

25 Q. That it had the word "Lenders" on it?

1 A. (No verbal response.)

2 THE COURT REPORTER: I didn't hear your

3 answer.

4 THE WITNESS: Yes.

5 Q. BY MR. LAKE: Do you remember that the -- The two
6 signatures that were already on the bottom of the page,
7 did you recognize whose signature that was when you saw it
8 that evening?

9 A. I -- I just assumed that it was Phil's because
10 his name is above the signature.

11 Q. Okay. Was the bottom line where it says -- did
12 it have a date filled in by hand?

13 A. It was complete. Because I'm used to putting a
14 date next to something that I sign, and I didn't. And
15 when I scanned the document I seen a date. And that was
16 it.

17 Q. Did you notice what date was on the document in
18 the -- the handwritten date on that page?

19 A. I seen a date, but I didn't relate to what that
20 meant.

21 Q. Did you notice whether the date was correct or
22 not?

23 A. Did I ask myself if it was correct? I'm sure I
24 just assumed that the date was correct.

25 Q. Did it --

90

1 A. Because I didn't have any specific tasks relating
2 to anything on any particular day, so --

3 Q. Uh-huh. Did it seem odd to you that the date was
4 already filled out?

5 A. No.

6 Q. So at the time that you signed the document, the
7 only two signatures that were already on the document were
8 the two on the bottom two lines; is that right?

9 A. Yeah.

10 I don't know when that happened. When I
11 approached the table that was already done.

12 Q. Okay. Do you remember what color the ink of the
13 signature was on those bottom two signatures?

14 A. I don't specifically, but, you know, it's always
15 blue or black, so -- I don't know.

16 Q. Okay. You just don't remember?

17 A. Yeah.

18 Q. Do you remember what color ink the handwritten
19 date was?

20 A. No. The same as -- same as the other ink that I
21 seen. I don't recall it being black or blue, but in that
22 kind of recollection -- You know, it was black or blue.

23 Q. Okay.

24 A. Yeah.

25 Q. Do you remember whether the date, the handwritten

91

1 date, was the same color as the bottom two signatures?

2 A. Same color. I would have to say, yes, because I
3 think I would have had a mental note or a flash if there
4 was a color difference. So I have to say the colors were
5 the same.

6 Q. Okay. Do you actually remember that they were
7 the same or do you just --

8 A. I don't remember anything.

9 Q. -- suspect that you would have remembered if they
10 weren't the same?

11 A. Correct.

12 Q. Were the bottom two signatures on the document
13 the same signature? Repeated twice?

14 A. Just as I see it here in front of me now.

15 Q. Okay. When you walked over, Mr. Jowdy asked you
16 to -- he said, "Will you witness this?" Is that --
17 something to that effect?

18 A. Something to that effect.

19 Q. Did he have a pen that he handed you? Or what --

20 what did you use to sign the document?

21 A. I believe I just recall picking one off the
22 table.

23 Q. There was a pen sitting on the table?

24 A. Yes.

25 Q. Was there more than one pen on the table?

1 A. More than one pen. I don't recall. I don't
2 believe so.

3 Q. Was there a tablecloth or a place mat or anything
4 on the table or was it just the -- the plain hardwood
5 table?

6 A. Just -- I don't know if you would call it a
7 hardwood table. It's definitely softer than hard. But
8 just the table.

9 Q. Okay. Just a flat wood table?

10 A. Flat wood table.

11 Q. When did Mr. Jowdy sign the document?

12 Did you see him sign the document?

13 A. Yes.

14 Q. When did he sign it?

15 A. I was called over. Just after I approached the
16 table he would have put a signature on it, and I followed.

17 Q. So he signed the document before you did?

18 A. Yes.

19 Q. Okay. I thought you said a minute ago that there
20 was only the two signatures on the bottom of the document.

21 A. When I approached the table --

22 Q. Okay. So --

23 A. -- and was shown the single document, there was
24 already ink on the paper.

25 Q. So when you walked over, when you --

93

1 Were you standing there when Mr. Jowdy
2 signed the document?

3 A. Yes.

4 Q. Did you sign the document with the same pen that
5 he used to sign the document?

6 A. Same pen. I recall there only being one pen.

7 Q. Okay. Did you see Mr. Kenner give the
8 document -- Well, when you walked over to the table, I
9 think you said there were some other people there.

10 A. There was definite -- there was definitely people
11 in the vicinity, yes.

12 Q. Okay. Were any of those people like talking to
13 Mr. Jowdy or Mr. Kenner or were they just sort of standing

14 nearby?

15 A. I would say standing nearby.

16 Q. What happened after you signed the document?

17 Well, were you the last person to sign --

18 A. Yes.

19 Q. -- the page?

20 A. Yes.

21 Q. Okay. What happened next?

22 A. I was called back to my location by Corona.

23 Q. Pardon me?

24 A. Someone was offering me a beer.

25 Q. Oh.

94

1 A. It was nothing formal, so it wasn't -- you know,

2 it wasn't like I needed to excuse myself or anything. So

3 I said that's it and walked away.

4 Q. So when you left was the paper still sitting on

5 the table?

6 A. Yes.

7 Q. When you left were Mr. Jowdy and Mr. Kenner still

8 standing there by the table?

9 A. I left before both of them, yes.

10 Q. Okay. Did you ever see Mr. Jowdy read the

11 document?

12 A. There was only the single page when I was at the
13 table.

14 Q. Okay.

15 A. Did I see him read it? I seen him sign it. I
16 didn't see anybody reading anything.

17 Q. Okay. Did you see what happened -- what happened
18 to the document after you walked away from the table?

19 A. No, did not.

20 Q. Did you see anything that Mr. Kenner did after
21 you walked away from the table?

22 A. I walked away and engaged in conversation with
23 others. No, I did not.

24 Q. Did you see anything that Mr. Jowdy did after you
25 walked away from the table?

95

1 MR. HARPER: Object to form.

2 THE WITNESS: No. I left immediately after
3 signing. I went to another location and wasn't paying
4 attention to anything associated.

5 Q. BY MR. LAKE: Okay. Do you remember where you
6 walked to after you left the table?

7 A. It would have been outside. It would have

8 been --

9 Q. Did you ever see this document again after that
10 moment but before the time that Mr. Harvey e-mailed you a
11 copy?

12 A. No.

13 Q. Did Mr. Kenner or Mr. Jowdy ever explain to you
14 what this document was that you signed?

15 A. No, other than what I mentioned earlier. And the
16 air of excitement was -- was that, that there's a lot of
17 things that are positive; look forward to you being an
18 employee.

19 Q. So --

20 A. And it was nothing at any particular time, it was
21 just -- how do you say -- the atmosphere. Lots going on,
22 lots of positive things happening. And Mr. Jowdy was
23 hopeful that I would be an employee very soon.

24 Q. Have you ever been involved in any other
25 situation where you were executing a document with

96

1 Mr. Kenner, like a contract or something?

2 A. In 2004?

3 Q. Any time.

4 A. I don't understand the question, then.

5 Q. Where -- was there ever another situation, other
6 than this one, where you and Mr. Kenner were both signing
7 a contract together?

8 A. Yeah. I signed an agreement with him much later,
9 yes.

10 Q. Okay. And in that instance did he sign the
11 document there in front of you or did he bring it to you
12 already signed by him?

13 A. That was a document more important to me. I
14 recall him giving me the document, which was an agreement,
15 and him saying, "Here is the document. I've signed it. I
16 want you to just look at it for a couple days and confirm
17 that everything's good with you," plus or minus.

18 Q. Had he already signed the document?

19 A. The document -- I remember him saying, "I've
20 already signed it. Take it home; look at it. Make sure
21 you agree with everything."

22 Q. Okay. So you didn't actually see him sign the
23 document. It was already signed when he handed it to you?

24 A. He just handed it to me.

25 Q. Okay.

2 and I haven't found the spot yet.

3 Q. Okay. When you signed this document on
4 December 4th, do you remember what kind of pen you used?

5 Like was it a ballpoint pen or a felt-tip pen or --

6 A. Hmm. You know, I don't have a real good
7 signature, as you can see by this document.

8 Was it ballpoint? Your question was, was it
9 ballpoint or felt?

10 Q. Yeah.

11 A. Definitely wasn't a pencil. I don't recall,
12 but -- You said please make an answer. I don't --

13 Q. Well --

14 A. -- really recall. I'd say ballpoint.

15 Q. -- you don't need to guess.

16 A. I'd say it'd be a ballpoint.

17 MR. AUGUSTINE: Don't guess.

18 MR. LAKE: Yeah, don't guess if you don't
19 know.

20 THE WITNESS: I don't know.

21 MR. LAKE: Because it's -- you know, it's
22 not a test or anything. I just want to know if you do
23 remember. And if you don't, that's fine.

24 THE WITNESS: I don't remember. But one

25 thing that happens when I write with a felt is typically,

98

1 because I write reverse, it will smudge. And I don't
2 remember smudging anything. But again, I don't -- I don't
3 know.

4 Q. BY MR. LAKE: What do you mean you write reverse?

5 A. I write like a lefty. I'm right-handed.

6 Q. Oh.

7 A. I tilt to the left. My signature does not go
8 from left to right. It goes the other way, like a
9 left-hander.

10 Q. I don't understand what you're saying.

11 A. Can I borrow your pen?

12 Q. Sure.

13 A. If I do something (indicating) because I write
14 this way (indicating) a lot of times when it's a felt --

15 Q. Oh, because your hand drags across the --

16 A. Exactly. It goes over my signature.

17 Q. -- the ink?

18 I see.

19 A. And typically I recognize afterwards, and I don't
20 recall that.

21 Q. So if it's a felt-tip pen, it would tend to

22 smudge?

23 A. So for that I believe it was a ballpoint.

24 Q. Okay. Or at least not a felt tip?

25 A. At least not a felt tip, because typically I --

99

1 You always remember when you sign something and you've got
2 a mess on your hand.

3 Q. Right. So it could have been something like this
4 or some other kind of pen?

5 A. Could have been, yeah.

6 Q. All right.

7 A. I guess that still means I don't know.

8 Q. You said you're right-handed; right?

9 A. Uh-huh.

10 MR. AUGUSTINE: Is that a yes?

11 THE WITNESS: Yes, I am right-handed.

12 Q. BY MR. LAKE: Do you know whether Mr. Kenner is
13 right- or left-handed?

14 A. In what regard? His signature?

15 Q. Yeah --

16 A. In sports?

17 Q. -- signature.

18 A. Pretty certain he's right-handed.

19 Q. Do you know what happened to the original page
20 that you signed that day?

21 A. I do not. Again, I walked away after I --

22 Q. Do you know -- did you see Mr. Kenner again that
23 evening at the party after -- after the document was
24 signed?

25 A. No, no.

100

1 Q. About how long after the document was signed did
2 everyone sit down and have dinner?

3 A. I don't recall it being a formal sit-down, so
4 hard to identify or answer that question. It was kind of
5 more of a --

6 Q. People just go through?

7 A. -- when you're hungry, go to the thing and --

8 Q. Okay. Do you remember how long it was between
9 the time you signed the document and the time that they
10 started serving food? Maybe I should put it that way.

11 A. I'd almost think that it had already started --

12 Q. People had already --

13 A. -- the food serving.

14 Q. -- started eating?

15 A. Yeah. I believe. Which would mean, you know, if

16 the schedule's accurate, saying dinner at 7:00. You know,
17 time frame is -- in those kind of areas when, you know --
18 nobody is trying to catch an airplane that night, so time
19 is kind of irrelevant other than the caterers maybe
20 getting upset. And I don't recall that happening either,
21 so --

22 Q. Do you know whether Mr. Kenner ate dinner at the
23 house that night?

24 A. I don't remember seeing him after I left the
25 table. I got back into the social atmosphere. I went

101

1 back to the social -- I don't recall seeing him
2 afterwards.

3 Q. Do you recall him -- do you recall seeing him
4 eating before he signed the document?

5 A. I don't recall him eating at all.

6 Q. Okay. How familiar were you with that house?

7 Did you know what was in the different rooms of the house
8 back in December 2004?

9 A. I had been at the house several times previous
10 for other social issues and, I guess, business-related
11 meetings. So I had been in the house previous, yes.

12 Q. Was there a device in the house that could make

13 photocopies?

14 MR. HARPER: Object to form.

15 MR. LAKE: If you knew.

16 THE WITNESS: Yeah, whew. There may have

17 been, I'm not sure, at that time.

18 Q. BY MR. LAKE: Did you see Mr. Kenner at any time
19 that weekend after that evening?

20 I mean, did you see him -- I know you said

21 you didn't see him at any time later that evening. Did

22 you see him the next day or the day after?

23 A. I don't -- I don't recall seeing him.

24 Q. Do you know whether -- whether he left Cabo or
25 whether he stayed beyond that evening?

102

1 A. I do not.

2 Q. How were the people -- how were the guests who
3 were staying at the hotel getting from the hotel to the
4 house for the dinner?

5 Did they all come by taxi or by some other
6 method?

7 A. I recall seeing taxies coming and going. I
8 recall seeing taxies coming and going. I can't say that,
9 if there was 40, 60 or 70 people at the house, that they

10 all came by taxi.

11 Q. Okay.

12 A. But I do recall seeing taxies.

13 Q. Was there any other method that was being used to
14 shuttle the people from the hotel over to the dinner that
15 you were aware of?

16 A. I would assume that there was some private
17 vehicles or rental vehicles. I don't --

18 Q. You just don't remember?

19 A. I don't remember that.

20 Q. Okay. At the time that you signed the document
21 on the table, about how many other people were in the room
22 with you --

23 A. In that room?

24 Q. -- if you had to estimate?

25 A. Yeah. You know, again, I mentioned earlier that

103

1 it was kind of a moving target. It just kept on growing
2 and thinning.

3 Q. Right.

4 A. In that room -- One thing that's kind of unique
5 about the house is that the doors open up. Like if this
6 is the width of the room, the sliding doors open the

7 entire width. So you get this perspective that there's,

8 you know, a lot of people in one space.

9 Q. Uh-huh.

10 A. In the interior, probably 20, 30, 40. Again,

11 never took a population matrix.

12 Q. Right.

13 A. Yeah.

14 Q. Can you remember the identity of any of those
15 individuals?

16 A. You know, there was I guess what you would call
17 many well-known baseball players and hockey players that
18 were at the event.

19 Q. Can you name some of them who were in the room at
20 the same time?

21 A. Hmm. I remember a couple hockey players. Rem
22 Murray, which -- Raymond Murray. I remember seeing -- You
23 know, there was a lot of significant names and very
24 familiar faces, but name specific -- There was several
25 hockey players, several baseball players. Most of them

104

1 active.

2 If you have a list of the guests, I can tell
3 you if I seen them at the house. That would be helpful.

4 Q. Okay. And you said you think the food had
5 already -- they had already started serving the food at
6 this point?

7 A. As I mentioned earlier, I believe it was just one
8 of those --

9 Q. Right.

10 A. -- circulating --

11 Q. Go get it when you're hungry?

12 A. Yeah. And then people standing. I don't
13 remember it being a real formal, formal deal.

14 Q. Uh-huh.

15 A. Or pardon me. I do remember it not being a
16 formal deal.

17 Q. After the document was signed, when was the next
18 time that you saw Mr. Kenner?

19 A. Sometime in '05, I believe.

20 Q. You -- When we were talking earlier about your
21 meeting with Mr. Kaiser, at the restaurant --

22 A. Uh-huh.

23 Q. -- during that conversation did Mr. Kaiser tell
24 you that he had maintained a copy of the loan agreement
25 document?

105

1 A. He had referenced -- and I think I said it
2 earlier. He had referenced that he had a copy and wished
3 he had brought it because he wanted to discuss it with me.

4 Q. And he told you that it had to do with the Hawaii
5 project?

6 A. What did he tell me? I don't recall him saying
7 anything that it was related to the Hawaii project. It
8 just became such a -- such an important document because
9 of the conversations that I had had with Mr. Harvey. So
10 everybody became very aware of the document.

11 Q. Did he tell you during that conversation that he
12 had been the one who at -- who told Mr. Kenner that he
13 should put that agreement in writing?

14 A. Repeat that for me, please.

15 Q. During that conversation with Mr. Kaiser, did he
16 tell you anything about that he was the one who told
17 Mr. Kenner that he should put the agreement in writing?

18 A. Repeat that one for me again.

19 Q. I just want to know if you remember him saying
20 anything about the fact that he told Mr. Kenner that
21 Mr. Kenner should put the agreement in writing.

22 Did he ever mention that to you?

23 A. Not in those words. But he did mention something

24 that -- he did mention something to that effect.

25 Q. Did Mr. Kaiser tell you about any conversations

106

1 he had had with Mr. Kenner about the loan agreement

2 document?

3 A. No.

4 Q. When was the first time you became aware of an

5 entity called Diamante Cabo San Lucas?

6 A. In 2004, when Mr. Jowdy and others were pursuing

7 Querencia, we had many discussions regarding -- I was an

8 employee of Querencia. We had many discussions regarding

9 the name of Querencia should they be the successful buyers

10 of that project. I recall, should we keep it Diamante?

11 Should we call it Dia -- or pardon me. Let me say that

12 over. Should we keep it Querencia? Should we rename it

13 Diamante Del Mar? Should we name it Diamante San Jose?

14 Should we name it Diamante Cabo? Should we name it

15 Diamante Cabo San Lucas? You know, what name was

16 significant for that property.

17 I had suggested that it would be most

18 appropriate to rename it because it had some -- Querencia

19 had some perceived problems. So my comment was a new name

20 for that project would be good.

21 So there was many conversations regarding
22 some type of name. Specifically, we went from Querencia
23 to another property called -- When the Querencia pursuit
24 didn't happen, another property became a potential
25 candidate to become the Cabo -- the Cabo Diamante. And

107

1 that property's name was -- well, for location's sake,
2 Twin Dolphin. The Twin Dolphin Hotel property.

3 So there was -- I'm leaving some voids.

4 There was a time frame that was spent on the Querencia
5 property, to be the owners. And there was a lot of
6 discussion about names intimately with myself because I
7 was in charge of the property, the project operations. So
8 my opinion, I believe, was very valued by Mr. Jowdy as far
9 as what do we think the name should be.

10 And then we -- That pursuit didn't happen,
11 and I helped him, you know, look in the market and
12 introduced to some of my friends in the area (sic). And
13 the Twin Dolphin property came up, and that was -- that
14 was, again, potentially going to be a Diamante property.
15 And there was conversations about it. What should the
16 name be? Should it be named -- you know, that whole
17 region is -- is based on it being Cabo San Lucas. So

18 anytime you talk about, you know, business or other, the
19 name sake, where are you going? I'm going to Cabo San
20 Lucas. So that's -- I don't know what about the name.

21 I might ask you to repeat the question
22 because I'm -- I'm thought-provoking as far as -- there
23 was many discussions about the naming of a potential
24 Diamante project.

25 Q. Okay. Let me try to simplify maybe a little like

108

1 this. As best you recall, when did -- when was it
2 actually settled that the name would be Diamante Cabo San
3 Lucas?

4 A. Hmm.

5 Q. When was that decision actually made?

6 A. You know, I remember seeing many different
7 documents that had different names on it related to the
8 project. I remember seeing Diamante Del Mar. I remember
9 seeing Diamante South. I remember seeing -- South. I
10 remember seeing -- on various documents, I remember seeing
11 Diamante Cabo San Lucas.

12 I'm not narrowing down the time frame for
13 you, but just globally there was a lot of discussions
14 about, you know, can't wait and we know we need -- the

15 development company needs a property in Cabo San Lucas --

16 Q. Uh-huh.

17 A. -- to help make the property in the north more

18 known, more aware, more viable.

19 So Cabo San Lucas, as an address, became a

20 very important target.

21 Q. Okay. But you don't know -- you don't remember

22 when the name was actually settled on?

23 A. No, no.

24 Q. Okay. Have you ever seen any e-mail or any other

25 document that refers to the existence of this loan

109

1 agreement document other than those e-mails you got from

2 Mr. Harvey and Mr. --

3 A. Garcia.

4 Q. -- Garcia?

5 A. Just the first half of that question.

6 Q. Have you ever seen any other -- any e-mail or

7 document or anything in writing that refers to the

8 existence of this loan agreement document other than those

9 two e-mails you got?

10 A. No.

11 Q. Are you aware of whether this note, this loan

12 agreement, ever came due?

13 A. No. I don't know any specifics relating to the
14 document.

15 Q. Do you know whether any of the plaintiffs in this
16 case ever sent a demand for payment to Mr. Jowdy?

17 MR. HARPER: I'm going to object. It's
18 beyond the scope of the deposition.

19 Don't answer it.

20 MR. AUGUSTINE: Lack of foundation as well.

21 MR. HARPER: Again, I'm asking the witness
22 not to answer the question.

23 MR. AUGUSTINE: And I'll instruct him not to
24 answer that question because it doesn't have anything to
25 do with the authenticity of the document.

110

1 MR. LAKE: Whether a demand for payment was
2 ever made I think is relevant to whether an agreement ever
3 existed.

4 I'm asking him whether he knows -- if he
5 knows --

6 THE WITNESS: I do not know.

7 MR. LAKE: I think that answers the
8 question.

9 Q. BY MR. LAKE: Were you ever asked by Mr. Kenner
10 or anyone else to help locate a copy of this loan
11 agreement document?

12 A. I was asked by Mr. Harvey. I was asked -- I was
13 not asked by Ken -- by Phil, no.

14 MR. LAKE: Let's go off the record for a
15 minute.

16 I've got maybe 45 minutes left.

17 MR. AUGUSTINE: Let's just go through.

18 THE VIDEOGRAPHER: We're off the record at
19 12:06.

20 (Recess.)

21 THE VIDEOGRAPHER: We're back on the record
22 at 12:14.

23 Q. BY MR. LAKE: I just wanted to circle back on a
24 couple of things. You mentioned the job you had with
25 Mr. Kenner's company related to the Hawaii property. Have

111

1 you ever seen the Hawaii property?

2 A. Yes. I've been to the Big Island, to Kona, a
3 couple times.

4 Q. When was that?

5 MR. AUGUSTINE: Well, let me -- let me just

6 object on the grounds that it's not the subject matter of
7 the deposition. It doesn't relate to the authenticity of
8 the document.

9 So you can ask questions related to that,
10 and that's perfectly fine.

11 MR. LAKE: You objected to him answering the
12 question?

13 MR. AUGUSTINE: Yes, I am.

14 Q. BY MR. LAKE: All right. Do you know who is
15 paying Mr. Augustine's legal fees?

16 A. For?

17 Q. Your attorney's, for this --

18 A. My attorney?

19 Q. -- for your representation.

20 A. I am obligated.

21 Q. You're the one who is paying him?

22 A. Correct.

23 Q. Have you seen the complaint in this lawsuit, that
24 was filed in this lawsuit?

25 A. I believe I have. If it's the same one that is

112
1 on -- in the Internet on the public -- public site. I
2 guess you would call it a public site.

3 Q. Uh-huh. When did you -- when did you read the --

4 Well, did you actually read the complaint or did you just
5 kind of look at it?

6 A. I just kind of looked at it. Looked at several
7 parts of it, yes.

8 Q. Okay. When was that?

9 A. Boy, the last Google search. Days ago. Not very
10 long ago.

11 Q. Had you looked -- had you seen the complaint
12 before then?

13 A. Just on the public domain or whatever you call
14 it.

15 Q. Okay. That's what I'm trying to find out, is
16 when you looked at it on the website or whatever it was.

17 A. Yeah, days ago.

18 Q. And had you seen it before that time?

19 A. Had not.

20 Q. Are there any other documents that you have
21 signed that are in the possession of Phil Kenner,
22 contracts and things like that, that have your signature
23 on them?

24 MR. HARPER: Object to form.

25 THE WITNESS: Could you repeat the question?

1 Q. BY MR. LAKE: Yeah. I'm just --

2 Do you know, are there -- other than this

3 Exhibit 1, are there any other documents in Phil Kenner's
4 possession that you know of that have your signature on
5 them?

6 A. Currently?

7 Q. Yeah.

8 A. I would say it's quite possible.

9 Q. Are you involved in any other business ventures
10 with Mr. Kenner other than the ones we've already
11 discussed?

12 A. Am I involved in any other business ventures with
13 Mr. Kenner? Currently, no.

14 Q. Are you involved with business ventures with any
15 companies owned or managed by Mr. Kenner other than the
16 ones we've already discussed?

17 A. Owned or managed. I don't know the list of
18 companies that he owns or manages, but I do not have any
19 business relationships with him.

20 Q. Okay. Do you have business relationships with
21 any of Mr. Kenner's clients?

22 MR. HARPER: Object to form.

23 Q. BY MR. LAKE: I'm sorry, did you say something?

24 A. No, I didn't.

25 Could you repeat that?

114

1 Q. Sure.

2 Do you have any business relationships with
3 any of Mr. Kenner's clients?

4 MR. AUGUSTINE: I'll make the same
5 objection; instruct him not to answer.

6 If it relates to the authenticity of the
7 document, then I'll allow him to answer it. But you have
8 to convince me that that question does.

9 THE WITNESS: Thank you.

10 MR. LAKE: Well, I think if it goes to his
11 connection with -- with Mr. Kenner, then it goes to
12 possible bias and to --

13 MR. AUGUSTINE: Well, what about to
14 Mr. Kenner's clients? I don't see how that has a
15 connection with Mr. Kenner.

16 Q. BY MR. LAKE: Did Mr. Kenner or Mr. Kenner's
17 attorneys ask you to review or comment on the complaint in
18 this action before it was filed?

19 A. No.

20 Q. Did Mr. Kenner or his attorneys ask for your --
21 ask for any information from you before they filed the
22 complaint in this action?

23 A. I don't know when the complaint was filed. Do
24 you have record of that for me?

25 Q. It would be -- I think it was November --

115

1 October 2008.

2 A. October 2008. October 2008. The filing that I
3 was referring to that I Google searched was actually a
4 more recent one. So not this particular one.

5 Pardon me for not understanding your
6 question previously.

7 So the case that was filed in October of
8 2008 is what you're asking me?

9 Q. Yeah. I mean, maybe part of the confusion is
10 that there's been an amended complaint filed in this
11 action.

12 A. Okay.

13 Q. What I'm trying to figure out is, when Mr. Kenner
14 was first preparing his complaint to file in this lawsuit,
15 did he have any communications with you or ask -- ask you
16 for any information to help him in preparing his

17 complaint?

18 A. I actually spent more time talking with
19 Mr. Harvey about the relevant issues of the complaint than
20 Phil Kenner.

21 Q. Okay. But -- but did you have conversations with
22 Mr. Kenner about his lawsuit against Mr. Jowdy before he
23 filed it? That's what I'm trying to find out.

24 A. October 2008. I'd have to look at what the
25 complaint actually is. Because at this moment, as I said,

116

1 I don't know what that is.

2 Q. Who is John Kaiser?

3 A. Who is John Kaiser. I believe he is a business
4 partner of Phil Kenner's.

5 Q. How long have you known him?

6 A. I believe the first time I met him would have
7 been -- The calendar only has two months. First time I
8 ever met him --

9 Q. A rough estimate is fine.

10 A. Yeah.

11 MR. AUGUSTINE: If you don't recall, you
12 don't recall.

13 THE WITNESS: Yeah, more than a year ago.

14 Three years ago? I don't recall.

15 Q. BY MR. LAKE: All right. Do you have any
16 business relationship with Mr. Kaiser?

17 MR. AUGUSTINE: I'll state the same

18 objection and instruct you not to answer because it's --
19 it's irrelevant to the authenticity of the document.

20 MR. LAKE: Well, he's another witness to --
21 he's another witness to the document with relevant
22 information. I just want to know whether the witnesses
23 know each other.

24 THE WITNESS: We do know each other.

25 MR. AUGUSTINE: That's not the question you

117

1 asked. You asked if they knew each other. We've already
2 established that. So I'll instruct him not to answer.

3 MR. LAKE: I think it's relevant to know
4 whether they have business relationships with each other.

5 But you're instructing him not to answer
6 that?

7 MR. AUGUSTINE: Counsel, I don't see
8 Mr. Kaiser's name anywhere on this document.

9 MR. LAKE: Well, the -- the plaintiff in
10 this case has identified Mr. Kaiser as the person who can

11 testify as to the whereabouts of the original copy of this
12 loan -- of this document after it was created. Actually,
13 I think the only copy that is in existence was purportedly
14 in his possession.

15 So he's clearly a relevant witness.

16 MR. AUGUSTINE: Right.

17 MR. LAKE: And I'm asking whether the two
18 witnesses who have relevant information to the existence
19 of this disputed document have business relationships with
20 each other.

21 MR. AUGUSTINE: Okay.

22 THE WITNESS: No, we do not.

23 Q. BY MR. LAKE: Let me ask it maybe a little more
24 broadly to make sure that I understand.

25 Do you have any business -- do you or any

118

1 businesses that you run have any business relationships
2 with Mr. Kaiser or any businesses that he runs?

3 A. As it relates to Diamante, yes.

4 Q. And what is that?

5 A. I'm assuming that he's involved in Diamante.

6 Q. Is he?

7 A. I'm hoping you can tell me, and then I'll

8 confirm --

9 Q. I don't know.

10 A. -- if he's an associate.

11 There's many people that are involved in

12 Diamante that I'm not aware of, in the Diamante entity.

13 And he could quite possibly be. And that's what took me

14 so long to try and recollect and find out.

15 Q. Well, do you know whether he is or not?

16 A. I can't confirm that, no.

17 Q. All right. Other than Diamante, are there any

18 other business relationships that you or -- or your

19 businesses have with him and his businesses?

20 A. No.

21 Q. To your knowledge, have Mr. Kenner or any of the

22 plaintiffs in this case -- meaning Little Isle or Ula

23 Makika -- ever made any payments to John Kaiser or

24 companies owned or managed by John Kaiser?

25 MR. HARPER: Object --

119

1 MR. AUGUSTINE: If you know.

2 MR. HARPER: -- to form.

3 THE WITNESS: I don't know.

4 Q. BY MR. LAKE: Okay. Do you know whether

5 Mr. Kenner, Little Isle or Ula Makika have ever
6 transferred any property to John Kaiser or companies owned
7 or managed by John Kaiser, if you know?

8 A. I don't know.

9 Q. Do you know whether any of -- whether Mr. Kenner
10 or any of the businesses owned or managed by Mr. Kenner
11 have any business relationships with Mr. Kaiser?

12 A. I believe so, yes.

13 Q. What do you know about that?

14 A. I know they are partners in the Hawaii deal. And
15 that's what I was thought-provoking, because obviously
16 Hawaii is involved with the Diamante project. So there's
17 the association of business.

18 Q. How are those two projects connected? Or
19 associated, as you say?

20 A. I'm not familiar with how they are associated.

21 Q. Do you believe that they are associated?

22 A. Can you just describe who who is again for me?

23 Q. Well, I don't know. You said a minute ago
24 that -- I think you said that those two projects were
25 associated. And I was wondering what led you to that

2 A. Just the circulation of the -- the loan document
3 makes me believe that.

4 Q. The circulation --

5 A. The circulation and the conversations related to
6 the loan document.

7 Q. Which -- which conversations are you referring
8 to?

9 A. Mr. Harvey disclosed a lot of things to me.

10 Q. Did Mr. Harvey indicate to you that -- that
11 the -- that the loan document had something to do with the
12 Hawaii projects?

13 A. The loan document originated from the Hawaii
14 project.

15 Q. Mr. Harvey told you that?

16 A. He put a lot of statements forward to me, and it
17 makes it very difficult to recall. I'll keep on thinking,
18 but a lot of them were threatening. So let me -- ask me
19 the question again and I'll keep it isolated for you.

20 Q. Okay. I'm just trying to figure out if
21 Mr. Harvey said something that led you to believe that the
22 loan document was connected to the Hawaii projects.

23 A. Yes.

24 Q. Do you remember what he said about that?

25 A. Not specifically.

121

1 Q. Do you know whether Mr. Kaiser was ever the
2 managing member of the Hawaii project?

3 A. I believe he is.

4 Q. Today?

5 A. Today. I don't know the structure of the
6 business.

7 Q. Do you know whether Mr. Kaiser was ever a member
8 of Little Isle IV or Ula Makika?

9 MR. AUGUSTINE: Only if you know.

10 THE WITNESS: I don't know.

11 Q. BY MR. LAKE: Do you know who Tim Gaarn is?

12 MR. HARPER: Object to form.

13 THE WITNESS: We referenced him earlier. I
14 said I do know him and have had limited conversations
15 with.

16 Q. BY MR. LAKE: Do you know what his occupation is?

17 A. I do not.

18 Q. Do you know anything about his education or
19 experience?

20 A. No.

21 Q. Forgive me if I asked this before, but have you

22 ever spoken to Mr. Gaarn?

23 A. Yes.

24 Q. When was that?

25 MR. AUGUSTINE: I'll object; asked and

122

1 answered, because you already asked him and he answered.

2 MR. LAKE: You're instructing him not to
3 answer?

4 MR. AUGUSTINE: You can ask him about the
5 conversation, but he's already asked -- he's asked and
6 answered that question.

7 Q. BY MR. LAKE: Well, tell me -- tell me what you
8 can about that conversation.

9 A. The last conversation I had with him -- I don't
10 recall when it was, but --

11 What do I recall? I don't recall what our
12 conversation was.

13 Q. Have you ever had a conversation with him about
14 the loan agreement document?

15 A. No.

16 Q. Have you had a conversation with Mr. Gaarn about
17 this litigation?

18 A. No.

19 Q. To your knowledge, have Mr. Kenner, Little Isle
20 or Ula Makika ever made any payments to Tim Gaarn or
21 companies that he owns or manages?

22 A. Repeat that, please.

23 Q. To your knowledge, have Mr. Kenner, Little Isle
24 or Ula Makika ever made any payments to Tim Gaarn or to
25 companies that he owns or manages?

123

1 A. I believe, yes.

2 Q. What payments are those?

3 A. I don't know. I'm not sure.

4 Q. Well, what is the basis for your belief that --

5 that such payments were made?

6 A. Just various conversations unrelated to anything.

7 He had an association or a -- I just recall

8 conversations, not really specific, that he -- he knew of

9 a Hawaiian company. I don't know much more than that

10 specifically.

11 Q. You mean conversations you had with Mr. Kenner?

12 Is that what you're talking about?

13 A. Right.

14 Q. In those conversations was there any -- did you

15 learn any information about the amount of the payments?

16 A. No.

17 Q. To your knowledge, have Kenner, Little Isle IV or

18 Ula Makika ever transferred any property to Tim Gaarn or

19 to companies that he owns or manages?

20 A. I don't know that.

21 MR. LAKE: Okay. I think that's it.

22 Do you have some questions?

23 MR. HARPER: Yeah.

24

25 (Next page, please.)

124

1 EXAMINATION

2 BY MR. HARPER:

3 Q. When did Tom Harvey contact you about this

4 agreement?

5 A. Several occasions initially, by telephone. I

6 don't recall the first time it would have been. I don't

7 recall the first occasion.

8 Q. Had you communicated with Tom Harvey before?

9 A. Before?

10 Q. Before he contacted you about this agreement.

11 A. Specifically about the agreement?

12 Q. No, on other occasions.

13 A. Yeah, we have talked before.

14 Q. Okay. Who is Tom Harvey?

15 A. Tom Harvey I believe is Mr. Jowdy's counsel from
16 New York.

17 Q. He's a lawyer?

18 A. Yes.

19 Q. And for what purposes had you communicated with
20 Mr. Harvey in the past?

21 A. We had talked just in a social capacity once
22 previous just relating to the Diamante project.

23 Undescript (sic).

24 Q. Was he -- when he contacted you about this loan
25 agreement, did he represent himself as Mr. Jowdy's

125

1 representative?

2 MR. LAKE: Objection.

3 MR. AUGUSTINE: You can answer.

4 THE WITNESS: On that call, I don't recall
5 him representing he being, but I knew that he was.

6 Q. BY MR. HARPER: How did he first contact you
7 about the loan agreement?

8 A. By telephone.

9 Q. And what was -- what was the substance of that

10 conversation?

11 Well, first of all, was anybody else on the
12 line?

13 A. Not that I'm aware of.

14 Q. Okay. And what was that conversation about?

15 A. It was specifically regarding -- specifically
16 regarding the loan agreement.

17 He had announced that there was a loan
18 agreement in question, and then proceeded to ask if I
19 recall anything. It appears that there's your signature
20 on the document and, again, do I recall anything? If I
21 could recall, please contact him.

22 First occasion.

23 Q. Was this a voicemail? I just asked because of
24 the last comment, please contact him.

25 A. Yeah. No, I think our conversation -- it was in

126

1 person; it was not a voicemail. But it was please contact
2 me should you recall anything related, because it appears
3 that your signature is on this document.

4 Q. Okay. And did you -- did you convey any
5 information to him at that point about recalling the
6 document?



7 A. That was the first time that I had had a
8 conversation with anybody regarding the document since
9 2004.

10 Q. And earlier you mentioned some of the -- that
11 some of Mr. Harvey's comments were threatening. Were they
12 threatening in that conversation?

13 A. No. The first conversation was more of an
14 information -- you know, there's a dispute. You're on it,
15 your signature's on it. What do you know about it?

16 So the first one was pretty simple. But he
17 definitely requested me to get back to him.

18 Q. Okay. And did you get back to him?

19 A. I never, but he called me a few days later and
20 asked a few more questions related.

21 It -- with every subsequent call or
22 communication it just became much more concerning to me.
23 Much more threatening to me, actually.

24 Q. And why was that? Why -- why would you call
25 those conversations threatening?

127

1 A. On one of the calls he was pressuring me to
2 recognize who I was supporting and that I need to make
3 sure I understand what that means. And that they have --

4 I don't recall if he said former, but former FBI
5 investigators, signature experts. Started cussing and
6 stuff, saying that the document's a fraud.

7 And so a lot of pressure just to -- to get
8 back to the time frame and recognize anything that I could
9 to help him understand what this document -- about this
10 document, I should say.

11 Q. Did you tell him that you recalled signing the
12 document?

13 A. I didn't say very much about the document because
14 it was very quickly into a threatening conversation.

15 Q. Was anybody else participating in the phone
16 calls?

17 A. Not on my end.

18 Q. What about on Mr. Harvey's end?

19 A. Oh, pardon me. On one other call I got a phone
20 call back. Again, time frame I don't recall, but it was
21 probably like the third or fourth communication.

22 Introduced himself, "Hey, Bob. Tom Harvey here. Also
23 John Behnke is with me."

24 Q. Who is John Behnke?

25 A. John Behnke is I believe still an employee of

128

1 Ken's, of Mr. Jowdy. He is a former FBI agent, assistant
2 to the director -- former assistant to the director.

3 So I found it kind of unusual when he made
4 that announcement, that, hey, John Behnke's here. I
5 consider John to be a good friend. We've built a good
6 friendship over our time as employees of Diamante.

7 And John didn't say anything on that call,
8 but it was announced to me that he was there, listening
9 in.

10 With that -- it might have been on that call
11 or another call, but, you know, he says, "Bob, you
12 really -- you really have to realize" -- he says, "You
13 obviously don't understand what the law means. You
14 obviously" -- "The law in the United States is different
15 than it is in Mexico."

16 He referenced the name Michael Meeks. He
17 says, "Meeks" -- "You have to be careful because Meeks is
18 going to have somebody waiting for you."

19 Q. Who is Meeks?

20 A. As I find out, he's an attorney for -- he's an
21 attorney. A California-based attorney. I think he
22 represents a few people that have different lawsuits
23 against -- I believe against Kenner.

24 Q. Okay.

25 A. But I was told that I have to be very careful

129

1 when I travel; that Meeks is going to have someone waiting
2 for me. You know, this is a very serious issue. You have
3 to be careful with what you do.

4 Everybody in the -- I believe he's aware --

5 I know Mr. Jowdy is aware that I have got two young
6 children that live in Canada and I travel back often. Any
7 free moment that I have I go back to spend time with my
8 young children. And quite frankly, my next trip out of
9 town was a little nerve-racking. And every one are
10 because, you know, when you -- when you get that held over
11 your head, it's intimidating, period.

12 Q. How many of these conversations were there?

13 A. I would say voice, four. Four different phone --
14 four or five different phone calls.

15 Q. Were there other communications?

16 A. One or two e-mails.

17 Q. Did you ever discuss with Mr. Harvey your
18 recollection of the execution of the agreement?

19 A. I did, but not thoroughly. I didn't -- I didn't
20 explain details of the occurrence.

21 Q. Did he ever ask you about the execution of the
22 agreement?

23 Let me rephrase.

24 A. Yeah.

25 Q. Did he ask you whether you signed the agreement?

130

1 A. He did ask, but I -- I didn't say anything. I
2 just said, "I" -- you know, "I know what I know and I'm
3 not sure what you're asking me to talk about."

4 Q. Did he ever encourage you to tell the truth?

5 A. That wasn't part of our conversation.

6 Q. In December of 2004 did you witness more than one
7 agreement or more than one document?

8 A. More than one document at the time that I --

9 Q. In the time period when this agreement was
10 signed, the loan agreement was signed by yourself, any
11 time during that time period did you perform a similar
12 function with regard to any other document?

13 A. Nothing surrounding that event in December, no.

14 Q. Okay. And you referred earlier to the table
15 where the document was signed as the wood being soft.

16 A. Yes.

17 Q. Describe that table for me in a little more

18 detail.

19 A. It's a large table, rectangular in shape. It's
20 soft because -- If you were to look at it, you can see a
21 lot of markings on it; whether it be pen markings or just
22 (indicating). It just -- How do you say it? It dents or
23 makes marks very easily. It's soft wood.

24 Q. It's fair to say it's not smooth like the table
25 in front of us today?

131

1 A. No, no.

2 Q. At the time in December of 2004, Diamante Del Mar
3 already existed; correct?

4 A. I -- Yes.

5 Q. Okay. And the Diamante entity or one or more
6 Diamante entities were looking to procure a property in
7 Cabo San Lucas; correct?

8 A. Yes.

9 MR. LAKE: Objection.

10 Q. BY MR. HARPER: One of those was Querencia?
11 A. That was the -- to the best of my knowledge, that
12 was the first property that the group was pursuing for
13 ownership.
14 Q. There were other properties as well?

15 A. Subsequent to the Querencia one, yes.

16 Q. It was understood that those would be a Diamante
17 property?

18 A. Yes.

19 Q. Whatever was acquired?

20 A. Yes.

21 Q. And it would be located in Cabo San Lucas?

22 A. That was the desire, yes.

23 Q. And one of the names discussed was Diamante Cabo
24 San Lucas?

25 A. I had heard Diamante, and I had heard many times

132

1 Cabo San Lucas.

2 MR. HARPER: Okay. I don't have any other
3 questions.

4 MR. LAKE: Just a little bit on redirect.

5

6 FURTHER EXAMINATION

7 BY MR. LAKE:

8 Q. Is Querencia located in Cabo?

9 A. Querencia is located in Baja, California South,
10 the state, and in the -- It's located in Los Cabos.

11 There's a lot of different identifiers to

12 Querencia.

13 Q. How far is that from Cabo San Lucas?

14 A. Well, it's -- from downtown Cabo San Lucas, about
15 eight miles.

16 One thing to consider is the airport in
17 San Jose or the airport in Cabo or the airport in Los
18 Cabos -- which is all the same area -- Let me just
19 rephrase that.

20 The airport in the region, the commercial
21 airport -- the commercial airport in the region, which is
22 in San Jose or Los Cabos, is called Cabo San Lucas
23 airport. CSL is the registration of that airport, Cabo
24 San Lucas.

25 Or it's SJD, actually, yeah. But it's -- In

133

1 some websites, actually, when I search for my flights,
2 most often I've got to find Cabo San Lucas.

3 Q. So is Querencia, then, in Cabo San Lucas?

4 A. Depends who you ask.

5 Q. Well, if you looked at a map, what would it say?

6 A. Where is it? It's -- If I looked at it or if you
7 looked at it?

8 If you looked at it, you wouldn't know if it

9 was Cabo San Lucas, San Jose or Los Cabos. If I looked at
10 it, I would know it was San Jose.

11 Q. Okay. Well, what's the address? How about that?

12 A. The address -- the address is San Jose.

13 Q. Did you ever tell -- Just to be clear on this --

14 A. Uh-huh.

15 Q. -- did you ever tell Tom Harvey that you signed
16 the document, the loan agreement document, in 2004?

17 A. I never told him that because, again, he quickly
18 went to a -- to more aggressive statements relating to the
19 document.

20 So it wasn't really comfortable to discuss
21 the document with him.

22 Q. That's how you perceived them, his comments, as
23 more aggressive?

24 A. I felt them to be.

25 Q. The table that Mr. Harper was just asking you

134

1 about, the table that the document was signed on, you were
2 sort of indicating what looked like --

3 Did the table have little holes or pockmarks
4 in it?

5 A. It's not smooth like this surface.

6 Q. Uh-huh.

7 A. Holes, pockmarks? It just dents very easily. If

8 I did that (indicating), it would actually have a little

9 dent in the table from that little movement.

10 Q. The wood is that soft?

11 A. It's pretty soft.

12 Q. That if you dropped a --

13 A. Maybe it would have to be this, the cap, a little

14 harder surface.

15 Q. It would leave a mark?

16 A. It would leave a mark, yes.

17 Q. Okay. So what you meant to indicate, then, was,

18 that if it had pressure on it it could leave a mark, but

19 not that it already had pockmarks or holes naturally in

20 the wood?

21 A. Because it could leave marks, I'm going to say

22 that it probably had a lot of marks on the table.

23 Q. Okay. But it wasn't one of these where the wood

24 naturally has little holes or pockmarks in it?

25 A. No, it's not a holey table. It's a -- you know,

135

1 I don't know if you could roll an object on it and it

2 would continue to roll. It's --

3 Q. So it's a pretty rough-hewn surface?

4 I'm just trying to get an --

5 A. Yeah, yeah. I'm just probably overthinking

6 because -- I never took wood shop in class, in school.

7 Q. I took it, but I failed.

8 A. It's just a soft surface and there's markings on
9 it.

10 MR. LAKE: Okay. I think that's it. Thanks
11 for your time.

12 THE WITNESS: Thank you.

13 MR. AUGUSTINE: Thank you.

14 THE VIDEOGRAPHER: This marks the end of the
15 videotape deposition of Robert Gaudet. We're off the
16 record at 12:52.

17

18

19

20

21

22

23

24

25

136

1 STATE OF ARIZONA)

2 : ss.

3 COUNTY OF YAVAPAI)

4

5 I, JILL MARSELL, a Certified Reporter,

6 Certificate No. 50021, in the State of Arizona, do hereby

7 certify that the foregoing witness was duly sworn to tell

8 the whole truth; that the foregoing pages constitute a

9 full, true, and accurate transcript of all proceedings had

10 in the foregoing matter, all done to the best of my skill

11 and ability. Deposition review and signature was not

12 requested.

13 I FURTHER CERTIFY that I am not related to nor

14 employed by any of the parties hereto and have no interest

15 in the outcome thereof.

16

17 WITNESS my hand this day of

18 , 2009.

19

20

21 JILL MARSELL
Certified Reporter #50021

22 Registered Professional Reporter

23

24

25